

# Planning Sub-Committee A

Tuesday 23 April 2013

7.00 pm

Room G02, 160 Tooley Street, London SE1 2QH

## Supplemental Agenda

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# Agenda Item 7

<b>Item No:</b> 7.	<b>Classification:</b> Open	<b>Date:</b> 23 April 2013	<b>Meeting Name:</b> Planning Sub-Committee A
<b>Report title:</b>		<b>Addendum</b> Late observations, consultation responses, and further information.	
<b>Ward(s) or groups affected:</b>		Brunswick Park, Cathedrals, Village, Chaucer	
<b>From:</b>		Head of Development Management	

## PURPOSE

- 1 To advise Members of observations, consultation responses and further information received in respect of the following planning applications on the main agenda. These were received after the preparation of the report and the matters raised may not therefore have been taken in to account in reaching the recommendation stated.

## RECOMMENDATION

- 2 That Members note and consider the late observations, consultation responses and information received in respect this item in reaching their decision.

## FACTORS FOR CONSIDERATION

- 3 Late observations, consultation responses, information and revisions have been received in respect of the following planning applications on the main agenda:

### 3.1 Item 7.1 – 1-20 Spurgeon Street

3.2 Further representations and information received.

### 3.3 Correction to numbering of Appendices:

The original published report within referenced the following appendices:

Appendix 1 – Consultation undertaken

Appendix 2 - Consultation responses received

Appendix 3 – Recommendation

The corrected appendices are as follows:

Appendix 1(a) - Planning Enforcement Notice and Stop Notice served on 11/05/2012

Appendix 2 (a) - Chronology of history from residents.

Appendix 3 (a) - Photographs from site visit on 10/04/13

Appendix 4 - Letter from Planning Inspectorate dated 01/11/12

Appendix 5 - Monitoring and Compliance Schedule for planning application ref: 13/AP/0501 (which is included at pages 37 – 39 of the main report, but not listed in the list of appendices on page 31 of the report)

### 3.4 Clarifications and corrections to report:

Para 4 - *The firm's correct name is Express National Carriers.*

1. Para 36 – *Officers can confirm that complaints have been received in regards to the use of a garage on Spurgeon Street for vehicle maintenance and can confirm that this use is also subject to the current planning enforcement investigation.*
2. Para 77 – *The report at this point should set out the need for all windows on the western elevation to be obscured and fixed shut in the interests of amenities, so as to correlate with Condition 5, which sets out the recommended position to Members.*
3. Para 133 – *To clarify a Unilateral Undertaking is not required to deal with the CPZ exemption, as this is now dealt with by Condition 15, as listed in the main recommendation.*
4. Para 137 – *should read: "3. Four (4) Bedrooms to be constructed as wheelchair accessible rooms within six months of the date of the decision and retained as such thereafter to make the hotel accessible to all members of the community".*
5. Paras. 131 – 137 – *The agenda report lists these correctly without repetition of numbering. For the record, as this has been raised by third parties, it is acknowledged that the version of the report that appeared on the planning pages of the website had repeated numbering in error at this point. However, the text of the paragraphs remains unchanged.*
6. Para 150– *the paragraph should read: "However, one issue raised by the Environment Agency relates to the use of the basement, however the applicants have confirmed that this existing layout is not subject to change and as such no additional information in regards to the basement is required".*

### 3.5 Further consultation responses:

#### Flood Risk:

Since the publishing of the report, the applicants have provided an updated Flood Risk Assessment, submitted on 18/04/13, in order to overcome the initial issues raised by the Environment Agency in relation to the information set out on the previous Flood Risk Assessment. The council have received a response from the Environment Agency on 19/04/13 and this response sets out no in principle objection to the use of the building as a hotel. The details are listed below:

We note that, when modelled without the presence of flood defences, the site is located in Flood Zones 1, 2 and 3 and is within an area benefiting from the River Thames tidal flood defences. However, we further note that the submitted revised FRA has demonstrated that, when modelled on a breach scenario, the site may be considered to be located in Flood Zone 2, outside of any breach extent held by the Environment Agency, as confirmed by our own breach modelling.

#### **Environment Agency position**

Accordingly, we now have **no objection** to the planning application as submitted.

#### Environmental Protection.

A full consultation response has been received by the Councils Environmental Protection team and they have recommended approval of permission subject to conditions. Officers can advise that conditions to deal with amenity issues, such as servicing times and control over future plant are included in the recommendation. An additional condition is however recommended, included in full below, to secure details of any mechanical ventilation for those rooms where windows are conditioned to remain fixed. Other matters are dealt with by separate legislation such as the Building Regulations.

3.6 Objectors have raised further issues in respect of the application. These issues are dealt with below:

Ownership Certificates

Certificate A has been signed within the application form and the applicant is listed as Ray Johnson and his address listed is Express National Cars, 1-20 Spurgeon Street, London SE1 4YP. The objectors have noted that the registered freehold of the premises is owned by Europa Gold Limited and as such that the incorrect certificate has been signed.

The Solicitor who is working on behalf of the applicant, (Tristan Morse of Humphreys & Co.) has confirmed that they are instructed by Europa Gold Limited, and he has also confirmed that the applicant (Raymond Johnson) is authorised to give instructions on this application.

He has also noted that any reference to "Express National Carriers" on the application form was for correspondence purposes only as the application should be shown to have been made in the name of "Europa Gold Limited".

No Scale Bar on Dwg no. The Plan - 01023/G/1-2/02 Existing First and Second floor layouts 2013-03-02

The only drawing which does not have any scale bar on is the Existing First and Second floor layouts 2013-03-02 and all other plans submitted as part of the application have scale bars on. As there is no change to the existing first and second floors, and as the proposed first and second floor plans have scale bars on them, as such officers advise it would be unreasonable to invalidate an application on this ground.

Effectiveness of conditions:

Issues have been raised in relation to the reasonableness and enforceability of the planning conditions and some residents have argued that these measures should be included within the S106 as opposed to as planning conditions. The main conditions raised refer to conditions 9 (Service Management Plan) 11 (Cycle Storage) and 12 (Refuse Storage).

Having reviewed the conditions, officers are satisfied that these meet the tests as identified within Circular 11/1995 - The Use of Conditions in Planning Permissions and that this is the most appropriate way of controlling these issues. A proposed monitoring and compliance schedule is presented in Appendix 5.

Noise Assessment:

Local residents have raised concerns that no noise impact assessment has been provided within the application documents. Having consulted the Environmental Protection team, no plant or machinery is proposed within the application and the potential noise issues relate mainly to the patrons arriving and leaving the site. These

issues have been taken into account and an assessment is made of the potential noise impacts within the main body of the report.

Reasons for issuing the enforcement notice

One objector has pointed out that the reasons given in paragraph 25 of the committee report does not give the full explanation for the issuing of the notice under part (b). Officers can advise that paras. 24 – 28 of the report provide summaries of the reasons for issuing the notice, the full text of which can be read at appendix 1a attached to this addendum.

3.7 S106 Amendments

There has been a request from the applicant to allow six (6) months for the completion of the wheelchair accessible units within the site. Officers have reviewed this request and concluded that it is reasonable to allow a timeframe of six months for this fit out. However, the other key works such as the relocation of the entrance still have to be completed within three months of the date of the planning permission. As such, the following amendment to the s106 is recommended:

3. Four (4) Bedrooms to be constructed as wheelchair accessible rooms within six months of the date of the decision and retained as such thereafter to make the hotel accessible to all members of the community”.

3.8 Amendments to conditions

In line with the abovementioned alteration to the S106 agreement, Officers are also recommending that condition 3 is amended to read as follows:

3. The development hereby permitted shall be completed within **six** months from the date of the permission.

*Reason*

*As allowed and required under Section 91 of the Town and Country Planning Act 1990, the standard 3 year period being inappropriate in this case due to the ongoing planning enforcement investigation.*

The reason for condition 18 shall be amended to read:

*Reason*

*In order to ensure that any potential issues of any odour, fume or noise nuisance can be considered by the Council in the interests of the amenity of the neighbouring properties, in accordance with Saved Policy 3.2 Protection of Amenity of the Southwark Plan 2007 and Strategic Policy 13 – High Environmental Standards of the Core Strategy 2011.*

And an additional condition is recommended to secure details of any mechanical ventilation for the rooms:

19. Prior to the installation of any mechanical ventilation to the rooms hereby permitted, details (which shall include location of any plant and noise output) shall be submitted to and approved in writing by the Local Planning Authority. The details shall be installed in strict accordance with the approved details and retained as such thereafter.

*Reason:*

*In the interests of the amenities of future and neighbouring residents and in order to accord with Saved Policy 3.2 'Protection of Amenity' of the Southwark Plan 2007 and Strategic Policy 13 'High Environmental Standards' of the Core Strategy 2011.*

**3.9 Item 7.4 – 77 Herne Hill 12/AP/2343**

3.10 Following publication of the report, a further four letters of representation have been received; one from the Herne Hill Society and a further three from a local resident who wishes to remain anonymous.

The various additional comments received have been summarised below;

- The application form states change of use to mixed A3/A4 use and D2 use, but the words used for the A3/A4 use on the form are 'drinking establishment/public house'. There is no mention of restaurant use. The use classes order states that the primary purpose of A3 use is food and light refreshment whereas the primary purpose of A4 is sale and consumption of alcohol. It is difficult to see how one establishment can have 2 primary purposes and although it could be argued that the reference in the application form is simply an error, it could also be argued that it is misleading and perhaps should not have been validated. It also could be argued that it shows the real intention of the applicant is to use the premises for bar use with music and that any restaurant use would be ancillary. In that case, the application should have been for A4 and D2 use. On that basis I would ask that the application be refused and any necessary enforcement action be taken.
- Additional information has been submitted to demonstrate the fact the Dee Dee's has been actively marketing itself as a bar as opposed to a restaurant including on its website, social media sites and external advertising at the premises. On balance it appears that Dee Dee's (by their own admission in their advertising) considers itself and has been operating almost entirely as a drinking and entertainment establishment. The only time Dee Dee's appears to have referred to itself as a "restaurant" is in the planning application itself.
- Information has been supplied to show that the licensing conditions have been amended to remove the requirement that alcohol be sold alongside a meal. As such this makes it possible for non-dining customers to run a tab at the bar. This is further evidence of a switch away from foods to a drinks based business.

3.11 Members are further advised that Officers have considered the requirement to impose an additional condition in order to secure the continued A3 use of the site. The proposed condition reads as follows:

The Class A4 Use 'Drinking Establishment' and Class D1 Use 'Entertainment' hereby permitted, shall at all times operate in conjunction with the use of the premises as a restaurant (Use Class - A3) and shall not, at any time, operate as independent uses without the prior written approval of the local planning authority.

*Reason*

*In order that the amenity of adjoining occupiers is protected and to ensure the continued use of the site for A3 purposes in accordance with saved policy 3.2 – Protection of amenity of The Southwark Plan 2007 (July), Strategic Policy 13 – High Environmental Standards of The Core Strategy 2011 and the provisions of the National Planning Policy Framework 2012.*

### 3.12 Item 7.5 4-7 Vine Yard London SE1 1QL

- 3.13 Clarification was requested in respect to two entries in the consultation section of the report from Flat 6, 6 Vineyard. Two representations were received from this property although from the same writer, but raising different issues within the two representations and therefore the reason for reporting each representation separately.
- 3.14 The applicant has produced a computer generated shadow diagram showing the impact of the development on the open areas and the buildings around the application site. There are two sets of diagrams, one showing the existing impact of the current building and impact of the extension with the existing building in mid-spring from 7am to 2pm and mid-summer 6am to 1pm. The drawings show no difference in the impact of the extension on the existing building on the overshadowing of adjoining open areas or buildings.

### REASON FOR LATENESS

4. The comments reported above have all been received since the agenda was printed. They all relate to an item on the agenda and Members should be aware of the objections and comments made.

### REASON FOR URGENCY

5. Applications are required by statute to be considered as speedily as possible. The application has been publicised as being on the agenda for consideration at this meeting of the sub-committee and applicants and objectors have been invited to attend the meeting to make their views known. Deferral would delay the processing of the applications/enforcements and would inconvenience all those who attend the meeting

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Individual files	Chief Executive's Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403

**AUDIT TRAIL**

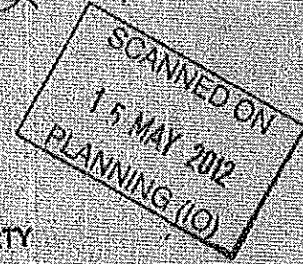
<b>Lead Officer</b>	Gary Rice, Head of Development Management	
<b>Report Author</b>	Alex Cameron, (Planning Officer) Terence McLellan, (Planning Officer) Michele Sterry (Team Leader)	
<b>Version</b>	Final	
<b>Dated</b>	23 April 2013	
<b>Key Decision</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Strategic Director of finance and Corporate Services	No	No
Strategic Director of Environment and Leisure	No	No
Strategic Director of Housing and Community Services	No	No
Director of Regeneration	No	No
<b>Date final report sent to Constitutional Team</b>		23 April 2013



TP/1240-57,

116N 0214.

Appendix 1a



**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**  
**TOWN AND COUNTRY PLANNING ACT 1990**  
(As amended by the Planning and Compulsory Purchase Act 2004)

## STOP NOTICE

SERVED BY: THE LONDON BOROUGH OF SOUTHWARK herein after referred to as "the Council".

To

- (1) Europa Gold Ltd care of Ian Meaby, Meaby & Co Solicitors, 2 Camberwell Church Street London SE5 8QY
- (2) Managing Director, Europa Gold Ltd, Mr Paul Kythreotis, 14 Dimitriou Karaoli, Ormidhia 7530, Larnaca, Cyprus
- (3) Mr. Ray Johnson Europa Gold Ltd 1-20 Spurgeon Street, London SE1 4YP
- (4) Martin Cambridge, Barry Road Accomodation Services Ltd, Barry House, 261 Barry Road, London SE22 0JT
- (5) The Manager, Hotel London Bridge, 10 Spurgeon Street, London SE1 4YP
- (6) The Owner / Occupier, 1-20 Spurgeon Street and 58 Great Dover Street, London SE1 4YP

1. On 11<sup>th</sup> May 2012, the Council issued an enforcement notice (of which a copy is attached to this notice) alleging that there has been a breach of planning control on Land at at 1-20 Spurgeon Street and 58 Great Dover Street, London SE1 4YP.

2. This Notice is issued by the Council, in exercise of their power in section 183 of the 1990 Act, because they consider that it is expedient that the activity specified in this notice should cease before the expiry of the period allowed for compliance with the requirements of the enforcement notice on the land described in paragraph 3 below. The Council now prohibit the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.

### 3. THE LAND TO WHICH THIS NOTICE RELATES

Land at: at 1-20 Spurgeon Street and 58 Great Dover Street, London SE1 4YP on the first and second floors of the building, shown edged red and inclusive of a shared reception area on the ground floor in the hatched area on the attached Plan 1 ("the Land").

For the avoidance of doubt the Land does not include the properties known as Flats 1 and 2 on the second floor of 1-20 Spurgeon Street.

### 4. ACTIVITY TO WHICH THIS NOTICE RELATES

The Unauthorised use of the Land, namely:

Change of use from an Office building within (Use Class B1) to a Hotel (within Use Class C1), following a intervening period of sporadic unauthorised use as a Hostel (Sui Generis).

### 5. WHAT YOU ARE REQUIRED TO DO

- (i) Stop the Unauthorised Use of the Land as a Hotel (within Use Class C1).

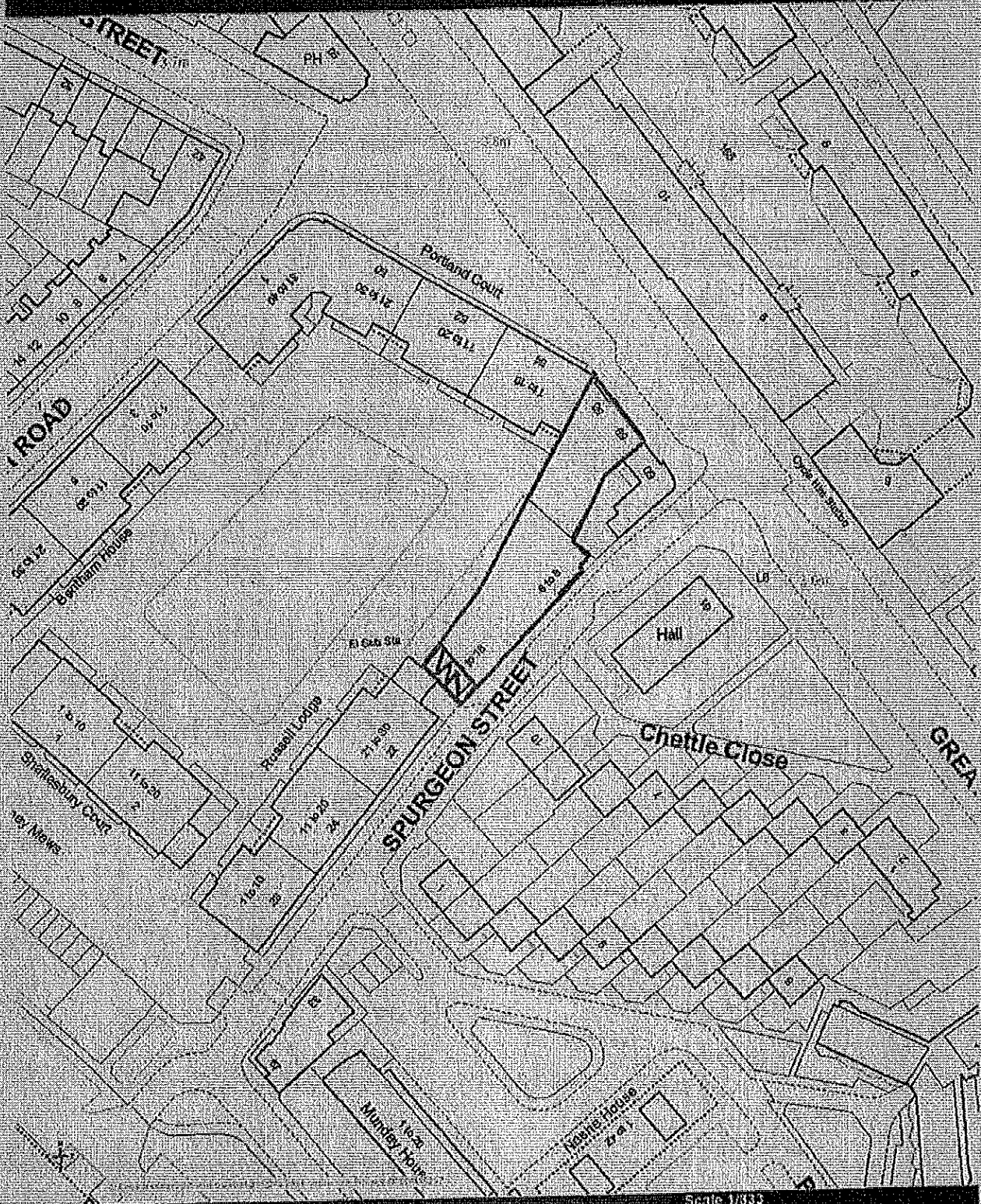
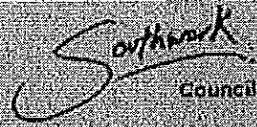
### 6. REASONS FOR ISSUING NOTICE

The Council's reasons for issuing the notice are:

A) The Unauthorised Use will operate outside of normal office hours. It is characterised by significant people movement and attendant noise and disturbance associated with that use, which will be harmful to the amenity of adjoining and nearby residential occupiers. The building has a flat roof which can be accessed from the second floor. In the absence of a condition this could be used as a roof terrace resulting in noise and disturbance which will be harmful to the amenity of adjoining and nearby residential occupiers. The Unauthorised Use is contrary to saved Policy 3.2 Protection of amenity Southwark Plan 2007 and paragraph 123 of the National Planning Policy Framework (NPPF), which refers to adverse impacts that planning decisions should seek to avoid. It is considered that the harm to amenity caused by the Unauthorised Use is contrary to paragraph 123 of the NPPF.

B) The proposal will establish a transient community on the southern side of Great Dover Street that will tend to be more active at night time and more disruptive, together with the cumulative impact of the student accommodation on the northern side of Great Dover Street this will detrimentally alter the predominantly residential character of the immediate area, contrary to saved policies 3.1 Environmental effects and 1.12 Hotels and visitor accommodation Southwark Plan 2007 and paragraphs 23, 26 and 27 of the NPPF. These paragraphs relate to Town Centre Vitality and support policy 1.12 which is in conformity with the NPPF in allowing flexibility in the

1-20 Spurgeon Street 58 Great Dover Street



Scale 1/833

location of certain uses subject to them being appropriate to the context and location, or an over dominance of visitor accommodation. In this location it is considered that this use is not appropriate, because of the cumulative impact of transient communities on the residential community in the immediate vicinity of the Site. Paragraph 123 of the NPPF, seeks to protect areas of tranquillity. In an urban context this location is considered to be tranquil.

C) In the absence of a Travel Plan and mitigation measures it is likely that the unauthorised use will have an adverse impact on parking and congestion in the vicinity of the Site, contrary to the following saved Policies of the Southwark Plan 2007 5.2 Transport Impacts; 5.6 Car Parking, Strategic Policy 2 – Sustainable Transport Southwark Core Strategy April 2011; and Policies 6.3 Assessing effect of Development on transport capacity and 6.13 Parking of the London Plan July 2011; and paragraphs 32, 37, 39 & 41 of the NPPF. These policies support the need for transport impacts to be assessed for all developments that generate a significant amount of movement. The Unauthorised use is considered capable of generating 60+ people movements a day and therefore requiring assessment. The ground floor use of the site is subject to an enforcement notice relating to vehicles visiting the site and harming residential amenity. This additional Unauthorised Use is considered to further exacerbate that harm.

D) The authorised use of the site is as offices within Use Class B1. This site is within the Central Activities Zone and fronts onto a classified road. Saved Policy 1.4 of the Southwark Plan 2011 is engaged in respect of this site. The material change of use results in a loss of B class floor space. It is acknowledged that the Hotel use will provide some employment opportunities, however no assessment of the impact on local employment opportunities has been made, neither have any steps been taken to ensure that local people can access those opportunities. No evidence has been provided to show that the exceptions in policy 1.4 have been met. The change of use is contrary to saved policies 1.1 Access to employment opportunities and 1.4 'Employment uses outside of the preferred industrial locations and preferred office locations, Southwark Plan 2007. Saved policy 1.4 is flexible in allowing change from an employment use if certain exceptions are demonstrated. The policy is supported by paragraph 22 of the NPPF as it does not unreasonably protect the employment status of the site, but instead provides a means by which the site might be released. No attempt to comply with the exceptions in the policy has been evidentially demonstrated to the Council.

E) The Hotel is located on the first and second floors of the building and is accessed is by way of stairs. There are no lifts. Rooms vary in size, but an average double room would be about 10 sqm. No rooms have been specifically identified as being accessible, suitable or adapted for use by persons with a disability. The failure to ensure a facility is equally capable of use regardless of disability is contrary to saved policy 3.13 Urban design Southwark Plan 2007 and paragraphs 57 and 58 of the NPPF that relate to high quality inclusive design that is accessible. In addition the Local Planning Authority is required when carrying out its functions to have regard to equality of access for those with protected characteristics to buildings providing a service to the public by virtue of the Equality Act 2010.

## 7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on the 14th May 2012 when all the activity specified in this notice shall cease.

Dated: 11 May 2012

Signed:



Deborah Collins  
Director of Communities, Law and Governance

On behalf of The London Borough Of Southwark

Nominated Officer: Gavin Blackburn (Senior Planning Enforcement Officer - Planning Enforcement) Deputy Chief Executives Department, London Borough of Southwark, 160 Toley Street, PO Box 64529, London SE1P 5LX  
Telephone Number: 020 7525 7007

## ANNEX

### WARNING

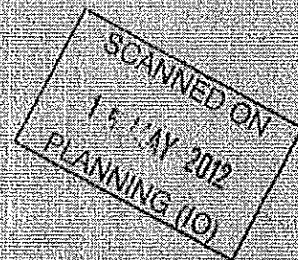
**THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 7.  
THERE IS NO RIGHT OF APPEAL TO THE FIRST SECRETARY OF STATE  
AGAINST THIS NOTICE.**

It is an offence to contravene a stop notice after a site notice has been displayed or the stop notice has been served on you. (Section 187(1) of the 1990 Act). If you then fail to comply with the stop notice you will be at risk of **immediate prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with Gavin Blackburn, The London Borough of Southwark, 160 Toley Street, London, SE1 2QH, Telephone: 020 7525 7007. If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

TIP/1240-59

11EN 0214

**IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY**



**MATERIAL CHANGE OF USE**

**TOWN AND COUNTRY PLANNING ACT 1990  
(as amended by the PLANNING AND COMPENSATION ACT 1991)**

**ENFORCEMENT NOTICE**

**ISSUED BY: SOUTHWARK LONDON BOROUGH COUNCIL**

- TO:
- (1) Europa Gold Ltd care of Ian Meaby, Meaby & Co Solicitors, 2 Camberwell Church Street London SE5 8QY
  - (2) Managing Director, Europa Gold Ltd, Mr Paul Kythreotis, 14 Dimitriou Karaoli Ormidhia 7530, Lamaca, Cyprus
  - (3) Mr. Ray Johnson Europa Gold Ltd 1-20 Spurgeon Street, London SE1 4YP
  - (4) Martin Cambridge, Barry Road Accomodation Services Ltd, Barry House, 261 Barry Road, London SE22 0JT
  - (5) The Manager Hotel London Bridge, 10 Spurgeon Street, London SE1 4YP
  - (6) The Owner / Occupier, 1-20 Spurgeon Street and 58 Great Dover Street, London SE1 4YP

**THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the above Act, at the land described below.

The Council consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the Notice and the enclosures to which it refers contain important additional information.

**2. THE LAND TO WHICH THE NOTICE RELATES**

Land at 1-20 Spurgeon Street and 58 Great Dover Street, London SE1 4YP on the first and second floors of the building, shown edged red and inclusive of a shared reception area on the ground floor in the hatched area on the attached Plan 1 ("the Land").

For the avoidance of doubt the Land does not include the properties known as Flats 1 and 2 on the second floor of 1-20 Spurgeon Street.

### 3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

The Unauthorised use of the Land, namely:

Change of use from an Office building within (Use Class B1) to a Hotel (within Use Class C1), following a intervening period of sporadic unauthorised use as a Hostel (SU Gen(s)).

### 4 REASONS FOR ISSUING THIS NOTICE

It appears to the Council that the above breach of planning control has occurred within the preceding ten years.

It is expedient to take enforcement action because:

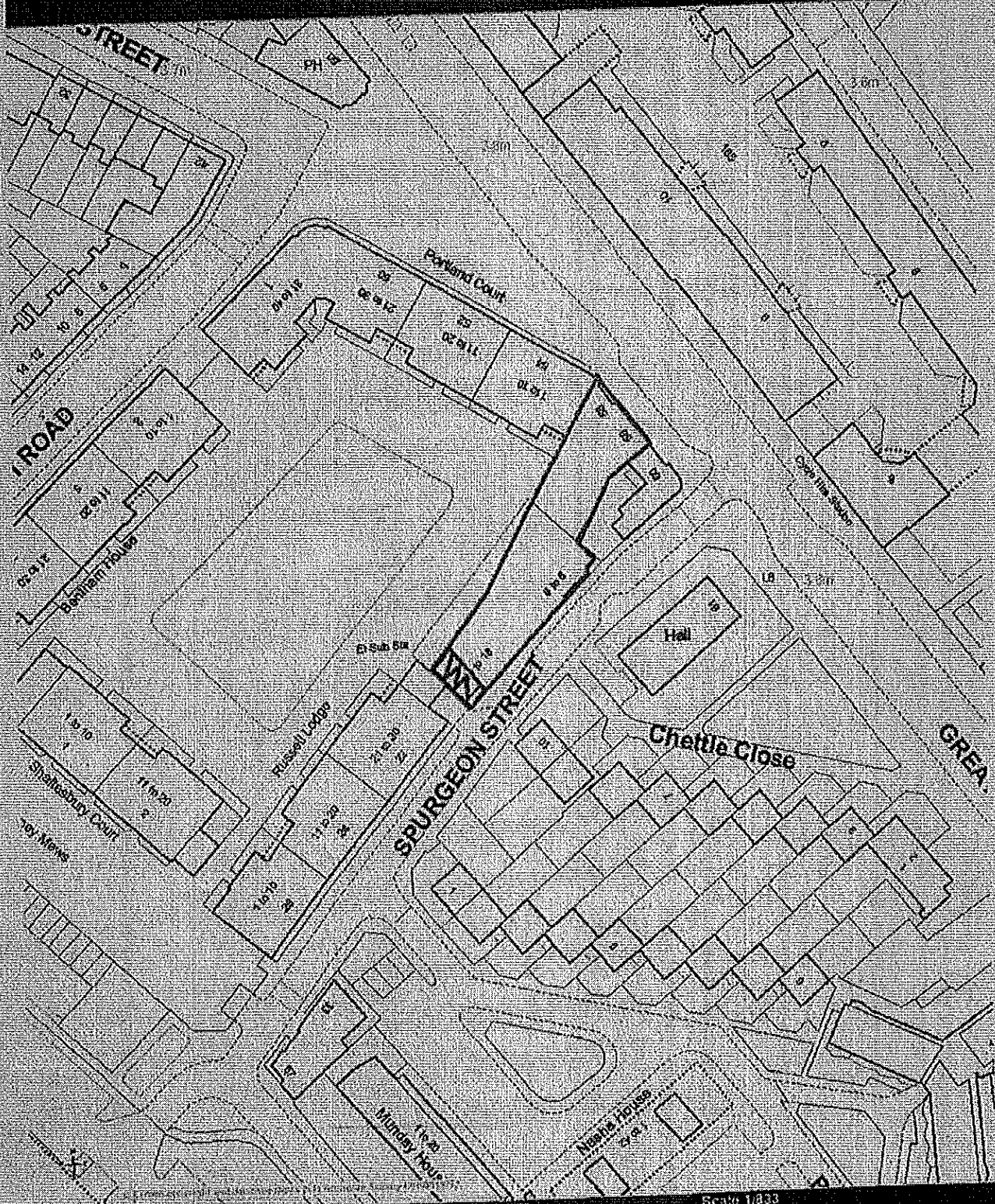
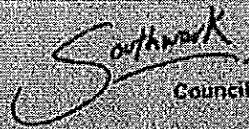
A) The Unauthorised Use will operate outside of normal office hours. It is characterised by significant people movement and attendant noise and disturbance associated with that use, which will be harmful to the amenity of adjoining and nearby residential occupiers. The building has a flat roof which can be accessed from the second floor. In the absence of a condition this could be used as a roof terrace resulting in noise and disturbance which will be harmful to the amenity of adjoining and nearby residential occupiers. The Unauthorised Use is contrary to saved Policy 3.2 Protection of amenity Southwark Plan 2007 and paragraph 123 of the National Planning Policy Framework (NPPF), which refers to adverse impacts that planning decisions should seek to avoid. It is considered that the harm to amenity caused by the Unauthorised Use is contrary to paragraph 123 of the NPPF.

B) The proposal will establish a transient community on the southern side of Great Dover Street that will tend to be more active at night time and more disruptive, together with the cumulative impact of the student accommodation on the northern side of Great Dover Street this will detrimentally alter the predominantly residential character of the immediate area, contrary to saved policies 3.1 Environmental effects and 1.12 Hotels and visitor accommodation Southwark Plan 2007 and paragraphs 23, 26 and 27 of the NPPF. These paragraphs relate to Town Centre Vitality and support policy 1.12 which is in conformity with the NPPF in allowing flexibility in the location of certain uses subject to them being appropriate to the context and location, or an over dominance of visitor accommodation. In this location it is considered that this use is not appropriate, because of the cumulative impact of transient communities on the residential community in the immediate vicinity of the Site. Paragraph 123 of the NPPF, seeks to protect areas of tranquillity. In an urban context this location is considered to be tranquil.

C) In the absence of a Travel Plan and mitigation measures it is likely that the unauthorised use will have an adverse impact on parking and congestion in the vicinity of the Site, contrary to the following saved Policies of the Southwark Plan 2007 5.2 Transport Impacts; 5.6 Car Parking; Strategic Policy 2 - Sustainable Transport Southwark Core Strategy April 2011; and Policies 6.3 Assessing effect of Development on transport capacity and 6.13 Parking of the London Plan July 2011; and paragraphs 32, 37, 39 & 41 of the NPPF. These policies support the need for transport impacts to be assessed for all developments that generate a significant amount of movement. The Unauthorised use is considered capable of generating 60+ people movements a day and therefore requiring assessment. The ground floor use of the site is subject to an enforcement notice relating to vehicles visiting the site and harming residential amenity. This additional Unauthorised Use is considered to further exacerbate that harm.

D) The authorised use of the site is as offices within Use Class B1. This site is within the

1-20 Spurgeon Street 58 Great Dover Street



Scale 1:250



Central Activities Zone and fronts onto a classified road. Saved Policy 1.4 of the Southwark Plan 2011 is engaged in respect of this site. The material change of use results in a loss of B class floor space. It is acknowledged that the Hotel use will provide some employment opportunities, however no assessment of the impact on local employment opportunities has been made, neither have any steps been taken to ensure that local people can access those opportunities. No evidence has been provided to show that the exceptions in policy 1.4 have been met. The change of use is contrary to saved policies 1.1 Access to employment opportunities and 1.4 Employment uses outside of the preferred industrial locations and preferred office locations, Southwark Plan 2007. Saved policy 1.4 is flexible in allowing change from an employment use if certain exceptions are demonstrated. The policy is supported by paragraph 22 of the NPPF as it does not unreasonably protect the employment status of the site, but instead provides a means by which the site might be released. No attempt to comply with the exceptions in the policy has been evidentially demonstrated to the Council.

E) The Hotel is located on the first and second floors of the building and is accessed by way of stairs. There are no lifts. Rooms vary in size, but an average double room would be about 10 sqm. No rooms have been specifically identified as being accessible, suitable or adapted for use by persons with a disability. The failure to ensure a facility is equally capable of use regardless of disability is contrary to saved policy 3.13 Urban design Southwark Plan 2007 and paragraphs 57 and 58 of the NPPF that relate to high quality inclusive design that is accessible. In addition the Local Planning Authority is required when carrying out its functions to have regard to equality of access for those with protected characteristics to buildings providing a service to the public by virtue of the Equality Act 2010.

The Council do not consider that planning permission should be given because planning conditions could not overcome these objections to the unauthorised development.

## 5. WHAT YOU ARE REQUIRED TO DO

- 1) Stop and cease the Unauthorised Use of the Land completely
- 2) Cease advertisement of the Land for Use as a Hotel on the Internet
- 3) Remove partitions and bathrooms subdividing the Land into hotel rooms associated with the Unauthorised Use of the Land
- 4) Remove from the Land any materials and debris associated with compliance with the above requirements.

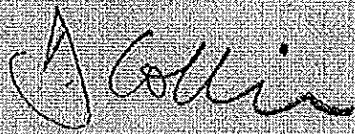
## 6. TIME FOR COMPLIANCE

In respect of requirements 1 and 2 within two days from the date this Notice takes effect.  
In respect of requirements 3 and 4 within six months from the date this Notice takes effect

## 7. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on 16<sup>th</sup> June 2012, unless an appeal is made against it beforehand.

Dated: 11<sup>th</sup> May 2012

A handwritten signature in black ink, appearing to read 'D Collins', written in a cursive style.

Signed:  
**Deborah Collins - Director of Communities Law & Governance**  
On behalf of the London Borough of Southwark  
160 Tooley Street, London, SE1 2QH

## EXPLANATORY NOTE

### YOUR RIGHT OF APPEAL

You can appeal against this notice but any appeal must be received, or posted in time to be received, by the Planning Inspectorate before the date specified in paragraph 7 of the Notice.

The enclosed Planning Inspectorate Information Sheet provides further information about your right of appeal against this Enforcement Notice.

If you are appealing under Ground (a), that you believe planning permission should be granted for what is alleged in the enforcement notice, you are required to pay a fee of £870.00. Of this amount, half (£335.00) is payable to the London Borough of Southwark and should be sent to the Planning Department, 160 Tooley Street, PO Box 64529, London SE1P 5LX together with a copy of your appeal form. You must send the remaining half, payable to the Department of Communities and Local Government, to the Planning Inspectorate, PO Box 326, Bristol BS99 7XF with your appeal form.

You must submit with your Appeal Form, or within 14 days from the date the Planning Inspectorate notifies you, a statement in writing specifying the grounds of the appeal and state briefly the facts on which you are relying to support of those grounds.

### WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the Notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period(s) specified in paragraph 6 of the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

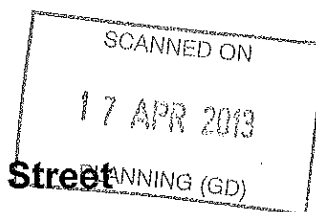
#### Enclosures:

Planning Inspectorate Information Sheet  
Spare copy of Enforcement Notice

#### Informative

A appeal under ground (a) will create a liability for Mayoral Community Infrastructure Levy if it is successful at a rate of £35sqm (Square Metre) for each square metre of gross internal floorspace within the Planning Unit.



**Premises at 1-20 Spurgeon Street and 58 Great Dover Street****Summary Chronology 2001-2012****November 2001**

Retrospective planning permission sought by Mr Lee Jiggins requesting change of use of first and second floors of 1-20 Spurgeon Street to a temporary hostel. Application subsequently amended to include the upper floors of 58 Great Dover Street following an internal site visit by LBS Case Officer. (Internal layout of the premises proved to be significantly different from the plans included in the original application).

**August 2002**

Application refused under delegated powers but premises continued to be used as a hostel. This breach of planning control was never addressed by LBS.

**June 2003**

Letter from XXXX to LBS requesting enforcement of certificate of lawfulness dated 25 October 2001. Yellow lines obliterated / illegal parking and use of street as depot / lines reinstated but illegal parking continues / intimidation of wardens and local residents / noise and trash.

**March 2004**

Submission from XXXX to Planning Inspectorate referencing the fact that *"the upper part of 1-20 Spurgeon Street continues to be illegally used as a temporary hostel, although retrospective planning permission for this was refused on 6 August 2002 due to the significant number of noise and other environmentally-related objections by local residents."*

**May 2004**

Dismissal of Lee Jiggins' appeal against the enforcement notice by Planning Inspectorate. Enforcement notice upheld.

**June 2004**

New planning application submitted by Mr Jiggins requesting permission for change of use to a hostel at 1-20 Spurgeon Street and 58 Great Dover Street. Duplicate of submission made in November 2001.

**July 2004**

Enforcement Investigation letter received from James Sherry, Interim Head of Development and Building Control. Formal objection submitted by XXXX to David Barratt, Enforcement Officer, on 15 July.

**September 2004**

No acknowledgment received to July letter – XXXX chased David Barratt via voicemail message 30 September

**October 2004**

XXXX chased David Barratt again via voicemail 7 October. Received email following day informing her that his employment with LBS ends on 15 October. Following four site visits he is clear that Express National Carriers (ENC) is "patently in breach" of the enforcement notice. On 8 October 2004 he dispatched instructions to Jason Polley in LBS Legal to bring prosecutions. Jason Polley arranged service of the enforcement

notices in late 2003 and David presumes he will be handling the litigation. XXXX is advised to liaise with Jason if process is inordinately protracted. On a planning level David advises XXXX to keep in touch with Jon Fullelove, Enforcement Team Leader, after his departure.

David informs XXXX verbally before he leaves LBS that his department is "suffused in a culture of indifference". He suggests that XXXX writes a strong letter to John East, Paul Evans' deputy. He confirms that the breach by ENC represents a material change of use and further site visits will be necessary.

XXXX subsequently left three messages for Jon Fullelove which were not returned. She spoke to Jason Polley. He recommended speaking to Shelley Edwards, a lawyer, in mid-November, to discuss progress.

#### **November 2004**

XXXX left further messages for Jon Fullelove which were not returned. On 26 November she spoke to Georgina on legal reception. Was told Jason Polley would email her. He did not.

On 28 November XXXX emailed Jon Fullelove and James Sherry with copies to ward councillors and Emma Williamson of Willowbrook Centre. Pointed out she had still had no response to 15 July letter, although James Sherry's July communication stated that Southwark's target was to reach a decision within 8 weeks. They have now had more than 4 months. Referred to new planning application number which shows that Mr Jiggins is requesting RETENTION of use of part of the Spurgeon Street premises as a hostel, although permission was never granted for this material change of use.

#### **December 2004**

XXXX emailed Jason Polley in Legal on 14 December requesting a response to messages left on 26 November and 6 December. She reminded him that Southwark's policy was to respond to residents within 10 working days. No reply received.

#### **January 2005**

Letter dated 28 January sent to Cllr Lorraine Zuleta by Deborah Holmes, Borough Solicitor. Planning Law Team within Legal Services had informed her that no instructions to prosecute had been received. She recommended contacting Jonathan Fullelove to confirm who has taken over the matter. She goes on to say that Legal Services can only take action once formally instructed by the Planning Department.

*[At this point XXXX gave up trying to get any sense out of LBS. She started working on the case again in March 2007.....]*

#### **March 2007**

A Final Notice for Mr Jiggins from Rossendale's Bailiffs was delivered to XXXX's block - they didn't know Jiggins' address. He owed £1277 for non-payment of council tax and costs. XXXX called them to tell them where to deliver their notice but warned them that unwelcome deliveries are not taken at 1-20 Spurgeon Street and it was likely they would be turned away.

#### **July 2007**

Following a meeting and discussion of the case with Cllr Tim McNally he forwarded relevant correspondence from XXXX on to Christine Zacharia, Head of Planning Enforcement, on 1 July. He did not receive a reply. On 29 July XXXX forwarded the

correspondence on to Christine again, copying in Cllrs Lorraine Zuleta and Tim McNally. She did not reply or acknowledge receipt.

### **August 2007**

On 13 August XXXX forwarded the same thread on to Christine Zacharia one more time, again copying in Lorraine and Tim. No reply or acknowledgement. On 24 August XXXX spoke with Neil Loubser in Enforcement, who asked her to forward the thread on to him with a copy to Dennis Sangweme, his Team Leader.

On 28 August XXXX received an apology from Dennis for the council's delayed action on this matter. He had followed up with Legal regarding the instructions previously given them and was advised that due to the passage of time there was a need to prepare fresh instructions. He passed XXXX's enquiry on to the Prosecutions Consultant on his team, Donald McPhee. XXXX was told that the case had been prioritised and she would be kept informed of progress.

### **October 2007**

Donald McPhee carried out a series of site visits and established non-compliance with the requirements of the enforcement notice. Steps were taken to build a prosecution case.

### **November 2007**

Donald McPhee informed XXXX that the correspondence sent to Mr Jiggins with a view to prosecuting him for non-compliance had been returned. His current address was not known. Letters were then sent to ENC at their registered address. These letters went unanswered.

### **October 2008**

The ENC Company Secretary was summoned to appear at Camberwell Magistrates' Court on 21 October. No one turned up on the day.

### **November 2008**

Another summons was issued for 24 November. The defendants did not turn up. The advanced disclosure served on Lee Jiggins had been returned as "not at this address".

### **February 2009**

Lee Jiggins was summoned again on 10 February. The Defendants did not appear but the Court was content that ENC were aware of the hearing date and they found the matter proved in their absence. A fine of £5000 was imposed together with a Victim Surcharge and an Order for payment and costs amounting to £8043. Following this the charge against Lee Jiggins was withdrawn.

### **March 2009**

On 18 March Matthew Cullen and Glen Camenzuli briefed the Borough and Bankside Community Council on the history of the case. They stated that it was possible to prosecute ENC again for the continuing breach of the enforcement notice but they suspected that a further conviction would not necessarily secure compliance. They suggested seeking an injunction in the High Court as an alternative sanction and said that the council's solicitors had already been briefed on this. They gave details of the standard of evidence required to seek the injunction. This included a statement of case from the Case Officer, evidence from residents and councillors of the nuisance/disturbance being caused by the continued offence, and any other evidence available from the local parking administrators.

*[No further action was taken by the council. XXXX took up the case again in May 2011...]*

### **May 2011**

XXXX informed Dennis Sangweme that the gardener at Chadwick Square (the development where she lives) had spoken to the workmen at 58 Great Dover Street and they told him that the premises were being turned into a 3-star hotel which would be ready in plenty of time for the Olympics. They also told him that work on most of the rooms had been completed. Dennis carried out a site visit but was unable to gain access to the upper floors. ENC operatives denied that any conversion into a hotel was taking place.

### **August 2011**

XXXX chased Dennis. He responded saying that he had been monitoring the site for the past month but had been unable to progress the case. He asked if XXXX had seen any further evidence of hotel activity. XXXX informed him that there was a great deal of activity going on around the site although the owners were purposely keeping the entrance at 58 Great Dover Street extremely derelict-looking. She told him that new windows had been put in on the upper floors. The Spurgeon Street entrance was being painted, changes were being made to the interior, and they had put in a large reception desk. She also told him that men had been working on the flat roof above the Spurgeon Street section of the building, which is visible from the courtyard of Chadwick Square.

### **October 2011**

XXXX chased Dennis. Did not receive reply.

### **November 2011**

XXXX submitted written question for submission at 7 November Borough and Bankside Community Council meeting.

### **December 2011**

XXXX received statutory communication dated 7 December from Gary Rice, Head of Development Management, regarding breach of planning control and use of premises as a hostel/hotel. On 8 December she received email from Gavin Blackburn, Senior Enforcement Officer. He had visited the site. In his view there was no breach of planning control at the time of his visit. The ENC operative he spoke to claimed to be unaware of any building work or occupation by anyone else. Gavin informed XXXX that the land is owned by a company registered in the British Virgin Islands. He believed the owner was probably someone local as the land registry contact address is c/o a Camberwell firm of solicitors.

### **January 2012**

XXXX met with Gavin Blackburn. He confirmed that when he carried out an internal inspection the accommodation had been upgraded but he was told by ENC operatives that the rooms were still being used for hostel purposes. He confirmed that if the premises **are** still being used as a hostel it is not possible for the council to take any enforcement action due to the length of time (10+ years) that the premises have now been illegally used for this purpose. If however the owners propose to change the use to a hotel it will be possible for the enforcement clock to start ticking given that there are differences between hostels and hotels in planning terms.

**Gavin informed XXXX that the premises had been used by Southwark Council between 2000 and 2007 as a hostel to house asylum seekers.** From 2007 onwards it



had only been used "from time to time" by other accommodation providers (Cornwood and Barryroad) and from July 2010 the usage as a hostel was very infrequent.

Gavin subsequently informed XXXX via email that he had not yet been able to establish the extent and duration of time during which the premises has been used as a hostel. He stated that enforcement action will be difficult on this site, because of the passage of time.

He assured XXXX that he had asked the Council's parking manager to keep him informed of any problems with non compliance with the parking regulations on Spurgeon Street. He reminded her that there has been considerable staff turnover in relation to this case. In terms of the current level of breach he hoped that parking wardens would be able to feed that information back to him.

### **April 2012**

On 29 April XXXX sent Gavin the link to the "Hotel London Bridge" website which stated that this illegal hotel opened in April 2012. She asked him to advise her by return what action the council intended to take now that the hotel was up and running.

She reminded him that she had first reported the unauthorised activities at these premises to Dennis Sangweme on 24 May 2011 and had been updating him on developments ever since. She said that she found it difficult to believe that almost one year had elapsed since this breach of planning control was reported to the relevant officers at Southwark but nothing had been done to prevent the hotel opening without hindrance. She emphasised that the website stated that *"Public parking is possible on street opposite the hotel on a first come first served basis – the hotel has no control over parking spaces, but these are free when available"*.

A reply came back from Dennis Sangweme stating that "officers are meeting shortly to review this case as a priority and we will come back to you asap."

XXXX pointed out to Councillors that she had been trying for a year to persuade officers to treat this illegal development as a priority whilst the refurbishment of the premises was ongoing. She said that it was astonishing to her and her neighbours that the case was only now being given the attention it deserved due to the fact that the hotel has already opened. Tim McNally told her he would escalate the matter to the relevant director – Steve Platts – to indicate that he takes this very seriously.

### **May 2012**

LBS serves a stop notice and an enforcement notice against the premises at 1-20 Spurgeon Street and 58 Great Dover Street.

### **June 2012**

Stop notice is ignored. Councillors and council officers have been able to book rooms at the hotel. There are reviews of the hotel on various websites.

Gavin Blackburn informs us that an appeal has been lodged against the enforcement notice served in May. There are a number of grounds to the appeal. The main grounds are:

- a) that the hotel should be granted planning permission
- b) that the breach of planning control as described by the notice has not occurred (they will expand on this during the course of the appeal, but Gavin believes their point to be

that they are essentially carrying on a use that is not materially different to the hostel use that existed before).

c) that the Council was out of time to serve the notice, the change having occurred either when Europa Gold acquired the building in 1988, or in 2000 when the hostel use began. The Council needed to act within ten years of the change of use.

Re the Stop Notice being breached, Gavin informed us that the usual remedy is to prosecute the relevant person. If the appeal was only on the first ground that planning permission should be issued, the fact that there is an existing breach of planning control would be settled. Prosecution for a continuation of that breach would be a reasonably clear offence. He says that is not the case for this site.

This matter is complicated by the fact that appeal is on the two additional grounds that there is no breach of planning control and if there is a breach, the Council are too late to do anything about it. If a prosecution for breach of a stop notice reached trial before the appeal was decided, in Gavin's view a magistrate would have to decide if there had actually been a breach of planning control. That is not a role a magistrate normally has to undertake. There would be a danger of a magistrate reaching one view on this matter and a Planning Inspector another. In this instance prosecution may not be straightforward.

#### **July 2012**

Gavin informs us that the Planning Inspectorate have suggested a hearing date for 6th November 2012.

#### **November 2012**

Gavin informs us on 1 November that the solicitors acting for the hotel have requested with only a few days' notice that the hearing on 6 November be adjourned. The Planning Inspectorate subsequently notifies him that having taken into account the comments from both parties it is the view of the appointed Inspector that the appeal cannot be properly dealt with by a hearing and will now proceed by way of local inquiry.

#### **January 2013**

We are still awaiting confirmation of the date of the public inquiry. XXXX spoke to the Case Officer at the Planning Inspectorate in November who does not believe it will take place before March 2013 at the earliest. She believes it will be a two-day inquiry.

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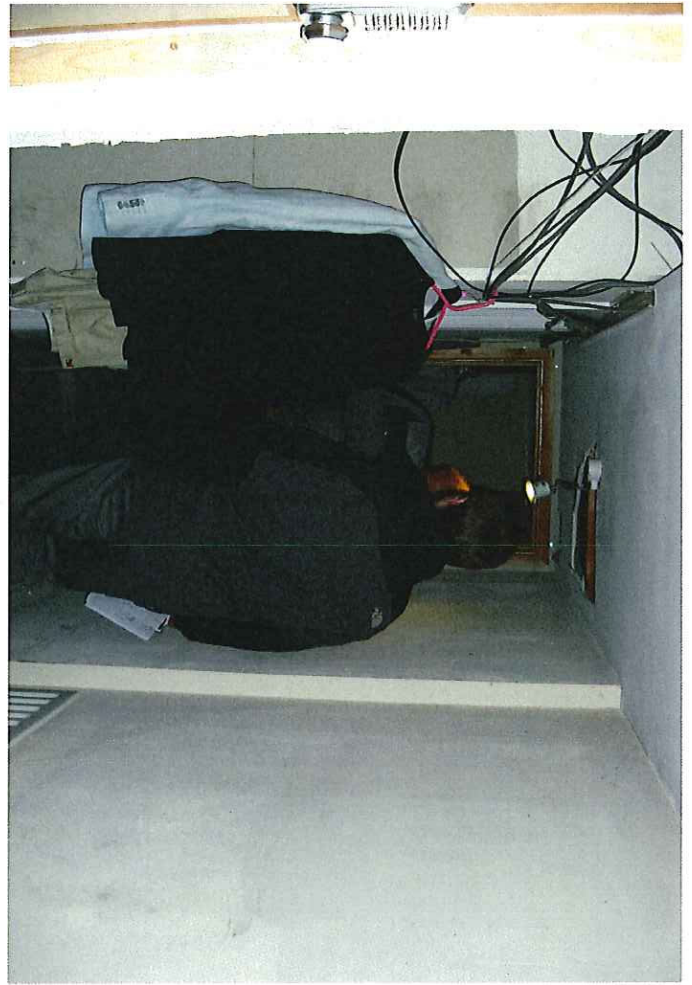
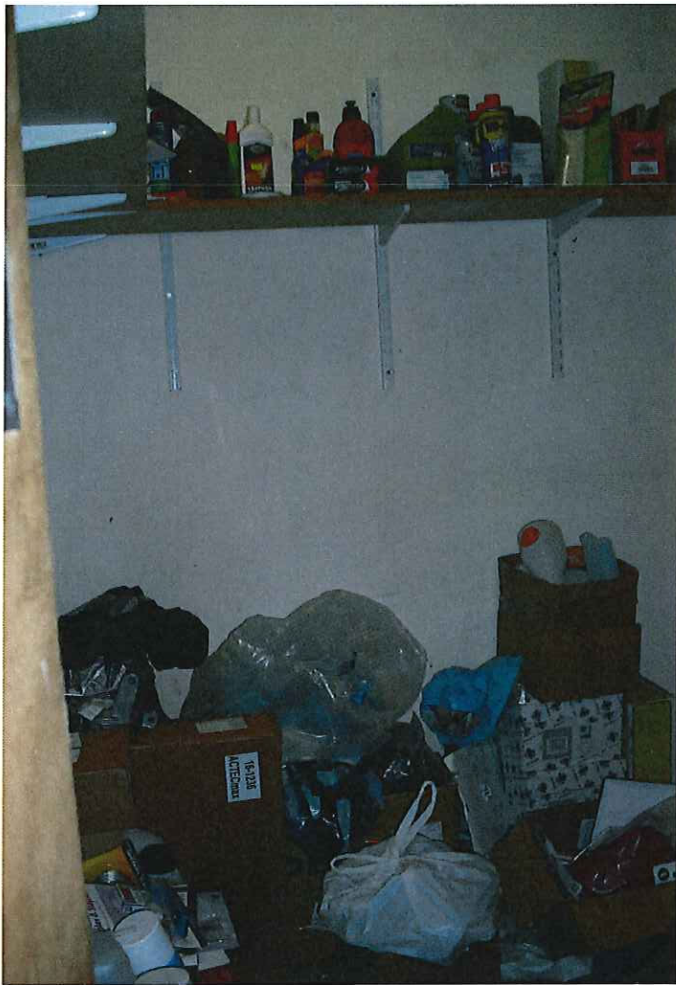
**As is clear from the above, the owners of these premises have been running rings around both the planning system and the legal system for more than 12 years.**

**They appear to be untouchable in relation to rules and regulations which apply to the rest of us.**

**Even if the appeal is not upheld - or if a future planning application is refused - we know from bitter experience that any conditions attached to the operation of the premises in general and the hotel in particular will be ignored.**

**Southwark Council appears to be unwilling or unable to enforce the law in this case.**















Appendix 4.



The Planning  
Inspectorate

3/26 Wing  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Direct Line: 0117 372 8067  
Customer Services: 0117 372 6372  
Fax No: 0117 372 6153  
e-mail: [teame1@pins.qsi.gov.uk](mailto:teame1@pins.qsi.gov.uk)

Appeals Administration  
London Borough of Southwark  
Appeals Administration  
Dept Chief Executives Dept  
5th Floor Hub 2  
Development Management  
PO Box 64529 London  
SE1P 5LX

Your Ref: 11/en/0214(GB)  
Our Ref: APP/A5840/C/12/2177929  
Date: 1 November 2012

Dear Sir/Madam

**Town and Country Planning Act 1990**  
**Appeal by Europa Gold Limited**  
**Site at 1-20 Spurgeon Street, London, SE1 4YP**

The Inspector is concerned that the appeal might not be suitable for an informal hearing in that there might be matters of fact in dispute in relation to the appeal on ground (d) where evidence would be better heard on oath and that cannot be done at a hearing. In addition, and in connection with the appeal on ground (b), there is disagreement as to the appropriate description of the current use. It seems likely that this matter might be resolved, after discussion, by correcting the description of the breach of planning control in the notice if necessary. However, there is further disagreement as to whether there has been one or more material changes of use since the year 2000. If the Council is right and there has been more than one change, then it seems likely that the property now has a nil use rather than a lawful use as offices - see s57(4) of the Town and Country Planning Act and Encyclopaedia of Planning Law commentary at P57.08. If that is so then the current use does not result in a loss of office use. In a case such as this it appears that there might also be a need for legal submissions, in particular in relation to the materiality of any change in the use which, once again, brings into question the appropriateness of proceeding by way of an informal hearing.

Your views in this matter would be appreciated as soon as possible.

Yours sincerely

*Richard Vause*

pp Fran Littler

Letter ID



*You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>  
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*