

Appeal Decisions

Hearing held on 31 January 2017

Site visit made on 31 January 2017

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 February 2017

Appeal A: APP/X5990/C/16/3148998 **67 Dean Street, London W1D 4QH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Blacks Limited against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice, numbered 15/59106/L, was issued on 21 March 2016.
 - The breach of planning control as alleged in the notice is the unauthorised and material change of use of the second floor of the building as shown in 'Plan A' attached to the enforcement notice from a Class C3 residential flat to use associated with the private members club on the basement, ground and first floor of the building, including use as a gallery, staff meeting room and storage area (sui generis use).
 - The requirements of the notice are: cease using the second floor of the building, as shown shaded blue in Plan A attached to the enforcement notice, for any purposes associated with the private members club on the basement, ground and first floor of the building including use as a gallery, staff meeting room and storage area (sui generis use).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Appeal B: APP/X5990/C/16/3149000 **67 Dean Street, London W1D 4QH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Blacks Limited against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice, numbered 15/59107/L, was issued on 21 March 2016.
 - The breach of planning control as alleged in the notice is the unauthorised and material change of use of the third floor of the building as shown in 'Plan A' attached to the enforcement notice from an independent residential flat (Class C3 use) to a use associated with the private members club on the basement, ground and first floor of the building, including use as an office, staff room and staff bathroom/WC (sui generis use).
 - The requirements of the notice are cease using the third floor of the building as shown in 'Plan A' attached to the enforcement notice from an independent residential flat (Class C3 use) to a use associated with the private members club on the basement, ground and first floor of the building, including use as an office, staff room and staff bathroom/WC (sui generis use).
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Appeal C: APP/X5990/W/16/3154413
67 Dean Street, London W1D 4QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Blacks Limited against the decision of City of Westminster Council.
 - The application Ref 15/09628/FULL, dated 15 October 2015, was refused by notice dated 24 May 2016.
 - The development proposed is use of the second and third floors as a private members club (sui generis) in connection with the existing private members club at basement, ground and first floor levels.
-

Appeal D: APP/X5990/Y/16/3154419
67 Dean Street, London W1D 4QH

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Blacks Limited against the decision of City of Westminster Council.
 - The application Ref 15/09629/LBC, dated 15 October 2015, was refused by notice dated 24 May 2016.
 - The development proposed is use of the second and third floors as a private members club (sui generis) in connection with the existing private members club at basement, ground and first floor levels.
-

Decisions

Appeal A: APP/X5990/C/16/3148998

1. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use of the second floor at 67 Dean Street, London W1D 4QH to a use associated with the private members club on the basement, ground and first floor of the building, including use as a gallery, staff meeting room and storage area (sui generis use) subject to the conditions attached as Annex A (a) to this Decision.

Appeal B: APP/X5990/C/16/3149000

2. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use of the third floor at 67 Dean Street, London W1D 4QH to a use associated with the private members club on the basement, ground and first floor of the building, including use as an office, staff room and staff bathroom/WC (sui generis use) subject to the conditions attached as Annex A (b) to this Decision.

Appeal C: APP/X5990/W/16/3154413

3. The appeal is allowed and planning permission is granted for use of the second and third floors as a private members club (sui generis) in connection with the existing private members club at basement, ground and first floor levels at 67 Dean Street, London W1D 4QH in accordance with the terms of the application, Ref 15/09628/FULL, dated 15 October 2015, subject to the conditions attached as Annex A (c) to this Decision.
-

Appeal D: APP/X5990/Y/16/3154419

4. The appeal is dismissed and listed building consent is refused for internal alterations at second and third floor levels.

Main Issues

Appeals A, B and C

5. In all these appeals I consider that the main issue is the effect of the loss of the residential units on the Council's supply of housing.

Appeal D

6. In this appeal I consider that the main issues are the effects of the proposed works on the special architectural and historic character of the listed building and whether the submitted plans provide enough detail of the proposed alterations to allow a proper assessment of these effects.

Procedural matters

7. Although appeals A, B and C all relate to the loss of the residential use of the second and third floors, the application for planning permission that is the subject of appeal C is slightly different from the uses currently taking place on these floors and those enforced against. The planning application envisages a members lounge, bar and WC on the second floor which is currently used for storage in association with the club. The third floor is in use as an office, staff room and associated kitchen and bathroom and this use is envisaged in the planning application for the change of use. The Decisions above reflect these various permutations.
8. In respect of appeal D, the description given by the Council in the refusal notice states that the proposal is for internal alterations at second and third floor levels. I consider that this more accurately reflects the works for which listed building consent is sought and the issues relating to the change of use of these floors will be fully discussed under the consideration of the applications for planning permission. I have therefore adopted this form of wording in the Decision.

Site and surroundings

9. The appeal premises is a Grade II* listed building comprising a basement with four storeys above that was originally built as a town house by John Meard, a noted carpenter/builder who constructed many properties in the Soho area of London. It is located in the heart of Soho, in the area identified in the Council's planning policy as the Core Central Activity Zone (Core CAZ) where there is a vibrant mix of commercial, entertainment and residential uses.
10. At present the lower floors are in an authorised use as a private club with lounges, coffee bar, drinks bar and restaurant over the three floors. There are 2 existing entrances, one at ground floor level from the street and another accessed by a stairway from the street at basement level. There is an enclosed courtyard to the rear.
11. On the second floor there are two main rooms and a former bathroom in the rear closet wing. The closet wing does not extend up to the third floor, where the layout includes 2 main rooms, a kitchen and bathroom. The building retains many original features but has also suffered a number of interventions and alterations, both authorised and unauthorised, particularly on the second and third floors.

Reasons

Appeals A, B and C - ground (a)

12. Planning policy for the Borough includes the Westminster City Plan November 2016 (WCP) and adopted Supplementary Planning Guidance (SPG) that supports the policies within the WCP. Policy S14 relates to housing provision and aims to protect all residential uses and achieve and exceed the housing target for the Borough. It states that proposals that result in the reduction of the number of residential units will not be acceptable. There is no dispute between the parties that the proposals would conflict with this policy.
13. However, the appellants also draw attention to other policies relating to development within the Core CAZ, in particular S18 which makes commercial and non-residential activities a priority in this area. A change of use within this property would benefit a business within the commercial and entertainment sector. The club is a centre that fosters social interaction between a membership that, I am told, is largely composed of people connected with the cultural and artistic activities of the area. The change of use would therefore gain support from policy S18.
14. The Council has identified its 5 year housing land supply (HLS), as required by the National Planning Policy Framework and the evidence given to the Hearing indicates that it is not only managing to meet its overall targets but is also exceeding them. The figures published by the Council in January 2016 show a net total of 7318 units for the 5 year period against the London Plan requirement of 5340 (1068 per annum). In this context, the loss of 2 units would have little impact on the Council's ability to meet its HLS.
15. I appreciate that an incremental loss of individual dwellings could eventually lead to a problem with the supply of residential units but, at present, this does not appear to be happening and there are particular and individual circumstances that support the proposals. The conversion of these 2 small units to an entertainment use would still be compatible with the mixed uses in the wider Soho area and would also provide additional commercial space which is encouraged by WCP policy S6.
16. The appellants consider that the residential use of the 2 floors in question are no longer compatible with the authorised use of the remainder of the building as a private members' club, citing the fact that occupants of the flats have to access their premises through the club, up the single staircase that serves the interior of the building, which can create privacy and security problems.
17. I note that there has been a residential presence on the upper floors since the club was granted planning permission in 1994 and that it is only in the last 2 or 3 years that this seems to have become a problem for the owners of the club. However, I can also understand that the expectations of both club members and potential occupiers of the residential floors are likely to have changed and it is not an ideal situation to have the only access to one's home through a busy and popular eating and drinking establishment.
18. There may be other examples of residential units in the vicinity where the only access is through the commercial premises but all the examples I was shown had an alternative entrance. It seems to me that the situation at the appeal site is unusual and atypical of how a mix of uses in a single property is commonly arranged. Even where access is via a single stairwell, the stair is normally enclosed so that users do not have to pass through, and cannot gain access to, a property in a different tenancy.

19. The appellants note that attempts to provide a dedicated access have not proved possible due to the problems of installing a new staircase in this grade II* listed building and I can understand that it is extremely unlikely that a solution could be found that respects the integrity of the historic layout. I give less credence to the claim that there has been difficulty in letting the premises due to the impacts on amenity from noise and smells arising from the club use. I was given no evidence of complaints from former tenants and little detail on attempts to let the premises.
20. I accept that it would be possible to rent out the residential units to club members, who have apparently expressed interest in doing so in the past, or to use them as staff accommodation. This possibility does reduce the weight I give to the unsuitability of the flats for a residential use.
21. However, I have also taken into account the advantages of the proposal in terms of allowing the listed building to return to a single use and the benefits to the business of being able to have more floorspace, both for members' use and for administration purposes. This is an important historic building and there are clear advantages in allowing greater access to the interior. The club has 1500 members and this is a significant number of people who would be able to better appreciate the layout and detail of the premises if the second floor were to be open to them.
22. I note that local residents have concerns about the impacts that the use of the second floor for members could have in terms of noise and disturbance. I was told that the current operators of the club have not always complied with all the conditions that were attached to the original planning permission and this has led to unacceptable levels of noise arising from members using the courtyard and because windows at the rear of the building were opened.
23. The Council does not object to the development on these grounds and confirmed at the Hearing that it considered that the imposition of conditions in line with those already in place would ensure the noise levels would not become unacceptable. I can understand the concern of residents who experienced a reduction in their levels of amenity when the new operators took over the running of the club. However, the club owners have now been made aware of their obligations in respect of complying with any conditions that control how the business is to operate. Failure to do so could result in further enforcement action.
24. Therefore, on balance, I conclude that the advantages of allowing the change of use, in terms of the wider opportunities it would create for the appreciation of the listed building and because of the compliance with the objectives of the policies that support commercial development in the area, are sufficient to outweigh the conflict with policy S14, particularly in the situation where the HLS for the Borough is proving robust.
25. The deemed application for Appeal A includes use a gallery, staff meeting room and storage. The deemed application for Appeal B is described in the same terms as shown on the application drawings for Appeal C. It seems therefore that the intention is to use the property as described in the application for Appeal C, which predates the issue of the enforcement notices. However, I see no reason why the second floor should not be used in the way described, subject of course to the grant of listed building consent for any physical alterations needed to the building to accommodate this.

Appeal D

26. This appeal deals only with the application for listed building consent, which has been submitted for the internal alterations to the building that the appellants wish to make to accommodate the change of use.
27. The appellants consider that there are advantages to the proposed works as they would include repairs and the reinstatement of features that would not otherwise be carried out without the change of use. I give little weight to this argument however; some of the works are to rectify alterations that appear to have been undertaken without listed building consent, such as the removal of a fireplace surround on the second floor.
28. However, I do accept that there are advantages in bringing the building back into a single use and this has been reflected in my decisions on appeals A, B and C. Nevertheless, I am not persuaded that the extent and detail of the physical works shown on the drawings that accompany the application are appropriate or necessary to facilitate this change of use.
29. The need for the sub-division of the bathroom on the second floor to provide 2 WC compartments has not been explained and, while there may be some advantages to this scheme over the previous layout, that proposed is not necessarily the best that can be achieved. There are also anomalies on the submitted drawings, meaning that the full scope of the proposed works in this room is unclear. For example there is a glazed panel shown on one elevation that does not appear on the plan of the room and the layout of the drainage is diagrammatic and lacks detail.
30. In a grade II* listed building, I consider that any alterations should demonstrably be the most sympathetic possible, to protect the architectural and historic interest of the property, unless there are compelling reasons to accept something less than this. I am not persuaded that the submitted scheme meets this criterion or that there are any overriding reasons why it is required in this particular form.
31. For these reasons, I consider that listed building consent should not be granted for the proposal in its current layout as the submitted plans give insufficient explanation to allow a proper assessment of the impact of the scheme on the architectural and historic interest of the building. The Council has noted that it considers that an acceptable scheme could be negotiated but it requires more details to be provided before listed building consent is granted and, for the reasons set out above, I agree.
32. I also consider that, although the appellants submit that consent could be granted subject to a condition requiring the submission of further details, it is the case that a condition is not intended to be used to define the actual work for which consent is being granted. At present, it is unclear exactly what works are proposed and, in these circumstances, alterations or additions to a scheme could not be achieved through a condition.

Conditions

33. To ensure that the amenities of local residents are protected, the windows to the rear of the second floor will be required to be kept shut, reflecting the condition imposed on the previous planning permission for the club.

34. It has been suggested that members should not be allowed access to the top floor of the building. I consider that it would be reasonable to limit the use of the third floor to that for which planning permission is sought, i.e. office space and staff facilities. The appellants have confirmed that these facilities are 'much needed' and that there will be no member access to this floor. The condition is necessary to ensure that the space is retained for this use. I also consider that it would not therefore be necessary to require the office window on the third floor to be kept closed, given the restricted use proposed above.
35. The Council has suggested that the numbers of members on the second floor should be limited to 30 and, in the Statement of Common Ground¹, the appellants have agreed that this is appropriate. The drawings submitted with the planning application show the floor being used as a lounge and bar and the appellants have stated that these rooms are to be restricted to invited guests only and no food would be served on this level. When the other conditions relating to opening windows and hours of use, which also apply to the rest of the building, are imposed, I am satisfied that, together, these measures will be sufficient to ensure that the amenities of neighbouring occupiers are protected.
36. For clarity, I will list the approved drawings in the conditions for the planning permission that is the subject the application submitted for the change of use in appeal C, but it should be noted that, although the use of the rooms is specified on the plans, the detailed layouts do not require planning permission. Listed building consent is, however, required to authorise any changes in the layouts and this is not granted by these permissions. These drawings are not strictly relevant to appeals A and B, which relate to the uses for the rooms as set out in the enforcement notices.

Conclusions

37. I have found that the policy conflict arising from the loss of the residential units would be outweighed by the benefits of allowing the building to return to a single use. Therefore for the reasons given above I conclude that appeals A, B and C should be allowed.
38. However, I have found that the appellants have failed to demonstrate that the works proposed under appeal D would not harm the architectural character and historic interest of the listed building and I therefore have insufficient information to justify granting listed building consent for the development. Therefore, for the reasons given above I conclude that this appeal should fail.

Katie Peerless

Inspector

¹ Hearing Document 3

APPEARANCES

FOR THE APPELLANT:

Simon Wallis MRTPI	Savilles Planning
Richard Ground QC	
Charles Rose	Heritage Practice
Aimee Squires	Savilles Planning
Marie Locke	General Manager, Blacks Club
Ben Goldman	Managing Director, Blacks Club

FOR THE LOCAL PLANNING AUTHORITY:

Lindsay Jenkins	Planning Officer, Westminster City Council
Ense Inyang	Planning Officer, Westminster City Council
Susannah Miller	Design and Conservation Officer, Westminster City Council

INTERESTED PERSONS:

Michael Fabricant MP	Member, Blacks Club
Guy Kendal	Member, Blacks Club
Dick Lawrence	Member, Blacks Club
Ana Potter	Local resident
David Bieda	Meard and Dean Street Residents Association
Cllr. Glenys Roberts	Ward Councillor, Westminster City Council

DOCUMENTS

- 1 Letter of notification and circulation list
- 2 Updated policies from Westminster City Plan November 2016
- 3 Statement of Common Ground
- 4 List of Housing completions submitted by the Council
- 5 5 – 15 year housing supply schedule
- 6 2013 Listed Building Consent for works to second floor
- 7 Summary of planning conditions and residential uses at 67 Dean Street, submitted by Mr Bieda
- 8 Bundle of photographs of building interior submitted by the Council³¹⁴

Annex A

Conditions

(a) Appeal A: APP/X5990/C/16/3148998

- 1) No more than 30 persons are to be allowed on the second floor at any one time.
- 2) Customers shall not be permitted within the second floor before 10:00 or after 01:00 Monday to Saturday (not including bank holidays or public holidays) and before 12:00 or after 01:00 on Sundays, bank holidays and public holidays.
- 3) All windows on the second floor, other than those facing Dean Street, are to be fixed shut.

(b) Appeal B: APP/X5990/C/16/3149000

- 1) Customers shall not be permitted within the third floor at any time.

(c) Appeal C: APP/X5990/C/16/3154413

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings: PL075 (4/5/16), PL106 (11/5/16), PL107 (11/5/16), PL108 (15/5/16), PL301 (11/5/16), PL302 (11/5/16), PL303 (11/5/16), PL304 (11/5/16), PL305 (11/5/16), PL306 (11/5/16), PL307 (11/5/16), PL308 (11/5/16).
- 3) No more than 30 persons are to be allowed on the second floor at any one time.
- 4) Customers shall not be permitted within the third floor at any time.
- 5) Customers shall not be permitted within the second floor before 10:00 or after 01:00 Monday to Saturday (not including bank holidays or public holidays) and before 12:00 or after 01:00 on Sundays, bank holidays and public holidays.
- 6) All windows on the second floor, other than those facing Dean Street, are to be fixed shut.