
Appeal Decisions

Site visit made on 17 January 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 24th February 2017

Appeal No.1: Appeal Ref: APP/X5990/Y/16/3161801 5 Bell Yard, London WC2A 2JR

- 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 Mr Kamal Pankhania, Dholak Estates Ltd against the decision of City of Westminster Council.
 - The application Ref 16/02925/LBC, dated 1 April 2016, was refused by notice dated 24 June 2016.
 - The works proposed are erect an apartment on the fourth and fifth floors of the building above the development permitted under reference 15/07344/FULL and listed building consent 15/07345/LBC.
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Appeal No.2: Appeal Ref: APP/X5990/W/16/3161786 5 Bell Yard, London WC2A 2JR

- 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 Mr Kamal Pankhania, Dholak Estates Ltd against the decision of City of Westminster Council.
 - The application Ref 16/02924/FULL, dated 1 April 2016, was refused by notice dated 24 June 2016.
 - The development proposed is Erect an apartment on the fourth and fifth floors of the building above the development permitted under reference 15/07344/FULL and listed building consent 15/07345/LBC.
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Decisions

Appeal No.1: Appeal Ref: APP/X5990/Y/16/3161801

1. The appeal is dismissed.

Appeal No.2: Appeal Ref: APP/X5990/W/16/3161786

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Mr Kamal Pankhania, Dholak Estates Ltd against City of Westminster Council. This application is the subject of a separate Decision.

Main Issues

4. These are in relation to both appeals a) whether the proposed works and development would preserve the Grade II listed building known as 5 Bell Yard,

(listed as Bell Yard WC2 (East side) Nos 4 and 5) or any features of special architectural interest that it possesses and b) whether or not they would preserve the character or appearance of the Fleet Street Conservation Area. In respect of appeal No.2 these are a) whether or not the change of use from office (B1) can be justified in the circumstances of this case and development plan policy and b) whether the proposed development would provide an appropriate standard of accommodation for future occupants.

Reasons

Significance

5. The Heritage Statement submitted with the appeals offers a detailed insight into the history and development of the building significantly over and above the description offered in the statutory list entry. From this analysis it is apparent that No 5 was substantially rebuilt in the 1880s as a speculative office development serving the burgeoning judicial and commercial activity in the environs of Fleet Street and the Strand.
6. Its special architectural interest and significance is most evidently expressed in the exuberant Neo-Classicism of its Bell Yard elevation with its applied orders of pilasters, architraves, cornices and elaborate dormer windows. This elevation is though ably supported by the return on the south of the building with continuing pilasters, blind panels and cornice, capped with a large and forceful crested chimney stack forming the apex to the gable. Interest is also to be found within, with a good deal of surviving structure (including the central stair) and in decorative finishes to the principal and secondary former office spaces. The roof, at present concealed behind the pitch of the attic and the southern stack, is a mix of utilitarian structures and plant that contribute nothing to the special interest of the building or its character as such.
7. No 5 also makes a significant contribution to the character and appearance of the Fleet Street Conservation Area. Whilst not addressing the thoroughfare directly, Bell Yard, as one of the streets or courts leading off it adds depth and texture to this, one of the principal ceremonial routes of the Metropolis, linking the Cities of London and Westminster. Bell Yard, like many other of the streets served by this route, contributes to the sense of bustling commercialism at the heart of the Capital.

The proposals and their Effect on the listed building

8. The proposals comprise, in addition to the uncontentious alterations to the existing fourth floor, a further reception room and terrace above formed in part by extended mansard roof pitches to south and east and a part clad and glazed elevations to south and west. The terrace would be set-back from the lip of the western mansard roof ridge and partly behind the crested stack of the south elevation. In effect the south west former of the new storey would be formed of glass, shrouded by the solid mansard pitches to the south and west.
9. This in straight elevational terms is an awkward structure that endeavours to balance the functional need for internal and external space with an exterior envelope that respects the architecture of the building. This objective, in architectural and visual terms, in my view, it fails to do. The south and eastern mansard pitches are improbably and so unconvincingly tall. Moreover, they accommodate the glazing giving access to the terrace at the key junction of

west and south elevations, fatally weakening the form of the structure at this point. On these terms it cannot be held to preserve the special architectural interest of the listed building, contrary to the clear expectations of the relevant sections of the Act.

10. However, as I acknowledge, the existing roof arrangement adds nothing to the special interest of the building at present and in the circumstances of this case, I consider it is the degree of material visibility of the proposals in relation to the standing architecture of the facades that is critical to determining the actual degree of effect on the special interest of the building that is critical here.
11. This is in fact the critical area of disagreement between the parties, with the appellant maintaining the proposals will not be readily apparent from public viewpoints. No rectified montages are supplied to assist the decision maker in this regard and it therefore has to be a matter of studied professional interpretation as to the actual degree of visibility and thus magnitude of effect. During my site visit I took considerable time to consider the proposals particularly from the south side of Fleet Street opposite Bell Yard. I then endeavoured to triangulate this assessment from the roof of the appeal property, gauging the extent and height of the proposed roof structure against the existing standing structure of the building, especially the crested stack on the south elevation.
12. In my view, from the critical perspective along the south side of Fleet Street and to a lesser degree as one moves to the north side, the proposed roof structure will be distinctly discernable from here. Moreover, the visible elements caught mid-way through the profile of the stack would be the most awkward element of the structure, the junction of the glazing and the mansard roof mantle. Here this cumbersome structure would be seen in awkward contrast with the crested stack of the gable, and thus with the greater part of the standing south elevation as it relates to the more oblique view of the main façade.
13. This outcome would in my view materially harm the character and appearance of the building as a building listed for its special architectural interest, so failing to preserve it, contrary to the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990, the desirability of which the Courts have determined as a matter of considerable importance and weight. Moreover, it would fail to accord with the expectations of paragraph 132 of the Framework which anticipates great weight being afforded to the conservation of designated heritage assets. For the same reasons they would also conflict with the policies of the development plan that seek to underpin these national statutory and policy objectives, namely policies S25 and S28 of the Westminster City Plan and policies DES5 and DES10 of the Unitary Development Plan (UDP).

Effect on the conservation area

14. For the reasons given above, I conclude that the proposed works and development would fail to preserve the special architectural and historic interest of the listed building. For the same reasons, the proposal would also diminish the contribution that the listed building makes to the conservation area, and thereby fail to preserve it, again contrary to the expectations of section 72 of the Act, to paragraph 132 of the Framework and policy DES9 amongst others of the UDP.

Change of use

15. Given my determinative findings in respect of the first two main issue issues, consideration of the remaining planning matters have no significant bearing on the outcome of my final decision. However, in light of the other applications made, they require addressing here.
16. Much of the consideration of this issue is framed by the status and weight to be given the grant of planning permission of the change of use of the remaining floors of the building from office to residential in October 2016. The Council's reasons for refusal in respect of the change of use are predicated on very limited weight being accorded this planning permission in relation to this case as, as they determine it, it had not been implemented at the time of the determination of the current application.
17. The policy context is complicated. The Council make clear that their approach to the change of use from offices to residential in the core Central Activity Zone (CAZ) area changed on the 1 September 2015. Applications for planning permission submitted after that date would be determined in the light of the changed policy position. This modified position was consolidated into formal policy and applied in the determination of planning applications from the 7 June 2016. The Previous planning permission for change of use was granted in October 2016, after the date of the adoption of the modified policy.
18. The Council's argument in respect of the current proposals is that, as they were determined as a 'stand-alone' planning application, and due to the non-implementation of the extant permission at the time of determination, the proposals were in conflict with modified policy resisting loss of office space and should therefore be refused. The appellant argues that the extant permission, the interdependent nature of both applications in terms of access to the respective units, and the degree to which it was evident that the extant permission was to be implemented, should all have been given increased weight in the consideration of the scheme now before me.
19. The timings of the submission of building notices and details pursuant to conditions to the Council and the determination of the appeal application were indeed close. However, it is a matter of fact that matters have now moved on and that these submissions are now before the Council for the processing and determination. Indeed, though it is not for me to judge whether the planning permission has technically been commenced, it was evident from my site visit that a significant degree of stripping-out had taken place and the intention to commence other works apparent through the presence of new fixtures and materials.
20. Moreover, and in the light of the above, it seems clear to me on the balance of the evidence that the previously approved residential scheme will in all probability go forward. The chances therefore, of the current scheme being a 'stand-alone' residential venture with an unimplemented residential scheme below are very remote. So notwithstanding the conflict with the modified policy S20 of the City Plan, the dismissal of the appeal on these grounds and in light of the significant weight I give to the likelihood of the implementation of the previously approved scheme as a material consideration, mean no objection can be sustained on these grounds.

Living conditions

21. The proposal drawings indicate the proposed accommodation being accessed off the main stair well now common to all residential accommodation beneath and by a lift to the fourth floor. With the likelihood of full implementation of the residential use determined above these access arrangements, consistent with the other accommodation approved, would provide an acceptable quality of accommodation for future occupants. There would be no material harm to their living conditions and so no conflict with policy S29 of the City Plan.

Planning balance and conclusion

22. In accord with paragraphs 133 and 134 of the Framework, it is for the decision maker, having identified harm to designated heritage assets, to consider its magnitude. In this case I conclude that, on balance, the proposal would lead to less than substantial harm, rather than substantial harm when assessed in the context of the significance of the assets as a whole. In such circumstances the Framework further requires that any such harm is weighed against any public benefits the works might offer.
23. I have found no harm in respect of the loss of residual offices space within the CAZ, neither have I found harm in respect of living conditions of future occupiers. Both these matters are therefore neutral in the balance of issues in this appeal. I do accept however that, in the context of paragraph 47 of the Framework and the need to significantly boost the supply of housing, the provision of an additional unit of residential accommodation does weigh in favour of the scheme. Indeed, in the context of paragraph 134 of the Framework, I readily accept that such provision may be accepted as a public benefit.
24. However, one unit of accommodation is a modest gain in the scheme of things and as a public benefit is significantly and demonstrably outweighed by the harm to the designated assets identified above. Conclusively, whilst that harm may be judged less than substantial in relation to paragraph 134 of the Framework, this does not mean it merits less than substantial planning objection, especially where the statutory duty to preserve the listed building and conservation area has not been met.
25. For the reasons given above and having considered all matters raised in evidence, I conclude that both the appeals should fail.

David Morgan

Inspector