
Appeal Decision

Hearing held on 20 June 2017

Site visit made on 20 June 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 28th June 2017

Appeal Ref: APP/X5990/W/16/3163399 1-4, Leicester Square, London WC2H 7NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Central London Investments Ltd against the decision of the Council of the City of Westminster.
 - The application Ref 16/07041/FULL, dated 25 July 2016, was refused by notice dated 20 September 2016.
 - The application sought planning permission for: "Roof extension at ninth floor level to provide restaurant (A3), use of ground to ninth floors as a hotel (Class C1), part use of ground and first floors as retail (A1), external alterations to elevations including new glazed frontages at ground and first floor levels, alterations to windows, new hotel entrance on western elevation, new terraces, and mechanical plant at roof level" without complying with a condition attached to planning permission Ref 15/11645/FULL, dated 25 May 2016.
 - The condition in dispute is No 16 which states that: "*You must apply to us for approval of detailed drawings (revised elevations and floor plans) showing the following alteration(s) to the scheme: (i) Removal of all windows and louvers from the North West and North East elevations; and (ii) Reconfigured floor layouts in connection with (i) above*".
 - The reason given for the condition is: "*To make sure that the development does not prejudice the operation or future development of the neighbouring Central Activities Zone uses which share the common boundary. This is as set out in Policies S1 and S22 of the City Plan: Strategic Policies that we adopted in November 2013, Policies 2.10 and 3.1B of the London Plan March 2015 and the advice contained in the National Planning Policy Framework (March 2012)*".
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Decision

1. The appeal is allowed and planning permission is granted for a roof extension at ninth floor level to provide restaurant (A3), use of ground to ninth floors as a hotel (Class C1), part use of ground and first floors as retail (A1), external alterations to elevations including new glazed frontages at ground and first floor levels, alterations to windows, new hotel entrance on western elevation, new terraces, and mechanical plant at roof level at 1-4 Leicester Square, London WC2H 7NA, in accordance with the application Ref: 16/07041/FULL, dated 25 July 2016, without compliance with Condition No 16 previously imposed on planning permission Ref: 15/11645/FULL, dated 25 May 2016, but subject to the conditions set out in the Schedule of Conditions.
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Preliminary Matters

2. The application was made by Mr Mark Cooper of Central London Investments Ltd. However, he no longer works for the company and the appeal was made in the name of the company alone. I have reflected this in the header to this decision.
3. At the hearing some time was spent going through the plans that were submitted with the appeal. These included a number of drawings, described as 'variations to the consented scheme'. However, the Council did not determine the original scheme, or the application to remove Condition 16, on the basis of these plans. They were not accepted in relation to my determination of this appeal. The Council subsequently submitted a list of 'approved drawings' that were agreed with the appellant. I have used this list in determining the appeal.
4. Work has commenced on the site to implement permission Ref: 15/11645/FULL to facilitate the use of the building for a mix of A1, A3 and C1 uses. However, the appellants confirmed at the hearing that, to date, none of the conditions on the permission have been discharged.
5. Photographic evidence provided by the owners of the adjoining property, Nos 5-6 Leicester Square, showed that holes for the windows and louvers that are the subject of disputed Condition 16 have been cut in the building's north-east and north-west elevations. On the site visit I saw that windows and louvers have also been installed in both elevations. However, issues relating to the lawfulness of activities on the site, including trespass on to the adjoining property, are not matters before me in the context of this appeal, which is confined to a consideration of the merits of Condition 16.

Main Issues

6. Having regard to the Council's reasons for refusing to allow the scheme to proceed without complying with Condition 16 and the discussion at the hearing, I consider the main issues are whether or not the condition is:
 - a) reasonable in relation to the scheme for development of a 95 bedroom hotel;
 - b) reasonable and necessary to protect the operation and future development within the Central Activities Zone (CAZ).

Reasons

7. Nos 1-4 Leicester Square is a substantial eight storey building which dates from the 1930s. It is in a prominent corner position at the junction with Leicester Street and within the CAZ as defined in the London Plan. It is also within the Leicester Square Conservation Area.
8. The proposal which was approved by the Council under Ref: 15/11645/FULL was a revised scheme following the granting of planning permission for a 142 bed hotel in 2014, Ref: 14/02236/FULL. The amended scheme reducing in the number of bedrooms to 95 was considered acceptable as it would provide higher quality visitor accommodation. Included in the revised scheme were proposals to introduce windows and louvers on the north-east and north-west elevations of the building. These would serve 17 of the proposed bedrooms

between the 2nd to 8th floors. The louvers would provide outlets for the hotel's ventilation system.

9. The north-east and north-west elevations of the appeal building overlook the airspace above the adjoining property. This property wraps around Nos 1-4 and also occupies the greater proportion of the block that encloses Leicester Square with Leicester Street, Lisle Place and Leicester Place. It is recognised by the Council and the current owners that this building is in need of refurbishment and that its redevelopment could contribute towards improving and enhancing the attractiveness of Leicester Square as a world class entertainment centre.

Reasonableness

10. The owners of No 5-6 objected to application Ref: 15/11645/FULL on the basis that windows in the north-east and north-west elevations of Nos 1-4 would prejudice redevelopment of their building. In response to this the Council suggested to the appellant that it would be appropriate to impose Condition 16, which requires submission of revised elevations and floor plans removing all the windows and louvers in those elevations.
11. As this matter appeared to be the only issue preventing the Council granting planning permission, the appellant 'accepted' the imposition of this condition. However, from the evidence presented and what I heard at the hearing, the appellant did not 'agree' to its terms and requirements and the appeal seeks permission to carry out the development without complying with it. Following the grant of planning permission Ref: 15/11645/FULL, no attempts were made to revise the scheme to comply with Condition 16. On the contrary, works have begun to implement the permission without doing so.
12. I accept that the imposition of the condition was a means of overcoming the objection from the owners of Nos 5-6. However, there was no evidence that the Council had fully considered the implications of removing the windows and louvers and reconfiguring the floor layouts for the development as a whole. The Council did not appear to have assessed or understood how compliance with the condition would affect either the number or the quality of bedrooms that could be provided in the hotel.
13. The approved internal layout shows that 4 of the 95 proposed bedrooms would be located in the central part of the building and would not have windows. All the other bedrooms would have a window providing outlook either over the surrounding streets or the airspace above Nos 5-6. In my view the windows were therefore integral to the overall design of the scheme. If the internal layout remained unchanged and windows were not inserted in the north-east and north-west elevations, 21 of the bedrooms would be windowless and would offer no outlook to their occupants. This would fundamentally change the scheme, reducing the quality of the accommodation on offer and making it less attractive to potential operators and guests.
14. If, on the other hand, only a small number of the bedrooms could be provided without windows, the area within the building that could be used as bedroom space would be significantly restricted. This would not only require a fundamental redesign of the internal layout of the scheme, but would also be likely to lead to a material reduction in the number of bedrooms that could be provided in the building. It therefore seems to me that in order to comply with

the condition it would not be possible to provide a 95 bedroom hotel that would be acceptable in all other respects. Removal of the louvers would have had other implications for the internal layout, particularly in relation to the location of plant and machinery within the building. However, it seems less likely that this change would require far reaching changes in the nature of the development as whole.

15. I therefore conclude that the condition is onerous and unreasonable because there was no evidence to demonstrate that it would be possible to implement an acceptable scheme for a 95 bedroom hotel without windows in the north-east and north-west elevations. The condition therefore fails to meet the tests for conditions set out in paragraph 206 of the National Planning Policy Framework (the Framework) and the guidance on conditions within the Planning Practice Guidance (PPG).

Existing and future development within the CAZ

16. I appreciate that the owners of Nos 5-6 are concerned about the effect of the on-going construction works being undertaken at Nos 1-4 on their property. However, that is not a matter for me to consider in the context of this appeal. Nevertheless, I am satisfied that the current uses within their building would not be adversely affected by the future operation of the permitted scheme at Nos 1-4 as a hotel, with associated retail and restaurant facilities. In this respect the inclusion of the windows cannot be considered to be un-neighbourly.
17. Leicester Square is at the heart of the area identified within the CAZ for tourism, culture and leisure activities. Policy 2.10 of the London Plan is supportive of development that would enhance and promote its attractiveness as one of the world's leading visitor destinations. Policy S22 and S1 of the Westminster City Plan: Strategic Policies seek to protect existing tourist attractions and promote uses that are consistent with the vitality, function and character of the CAZ. However, these policies are all phrased in general terms and do not include any specific references to Leicester Square. Furthermore, there are no Supplementary Planning Documents or any planning briefs that identify potential development sites, or provide guidance in relation to development proposals within this part of the CAZ.
18. Nos 5-6 varies in height from two to four storeys, whereas many of the other surrounding buildings are significantly higher, including Nos 1-4. There is therefore considerable potential for a redevelopment that would increase the height of the building. Whilst this might be the owner's long-term aspiration, at present there are no firm proposals. Initial ideas for a scheme were presented to the Council in November 2016. The agreed note of that meeting indicates that the principal of a redevelopment for mixed uses comprising new leisure facilities at lower levels and offices and a hotel above, was welcomed.
19. At that meeting the building's existing façade facing Leicester Square was also identified as an important feature. Its loss would be unlikely to be acceptable as it makes a very positive contribution to the Conservation Area. I understand that the broad issues of height, mass and bulk of any new or refurbished building were also discussed, but no details were agreed. All this suggests that any potential scheme for Nos 5-6 is at an early stage of development. Since that meeting no specific proposals have come forward and no planning application has been submitted.

20. I accept that allowing the windows in the two elevations of Nos 1-4 would significantly alter the options available for redevelopment of Nos 5-6. However, there was no evidence to suggest that it would prevent a suitable alternative scheme coming forward. Whilst Policy S22 seeks to protect existing tourist attractions and arts and cultural uses, it does not offer any specific protection for this building or its on-going operations. Neither was there any substantive evidence to suggest that a redevelopment of this site would be critical to sustaining the vitality or viability of the wider cultural, leisure and tourist uses within this part of the CAZ. In these circumstances, I can give the indicative scheme little weight in my considerations of the appeal before me.
21. Taking all these factors into consideration, I conclude the condition is not necessary to protect the operation and future development within the Central Activities Zone (CAZ). I therefore find that there would be no conflict with Policy 2.10 of the London Plan or Policies S1, S22 of the Westminster City Plan.

Other Matter

22. The appeal site lies within the Leicester Square Conservation Area and I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that Area. As Condition 16 would have prevented any change to the appearance of the existing flank walls of Nos 1-4, the Council did not assess the effects of the windows on the Area. It therefore falls to me to do so.
23. The north-east and north-west elevations of the building are not prominent in public views from the surrounding area. The windows on the north-west side of the building are difficult to see from Leicester Street due to their elevated position on the flank wall of the building and the structure on the roof of the existing casino. They therefore do not adversely affect the Conservation Area. Those on the north-east elevation cannot be seen when looking directly at the buildings from along the north side of Leicester Square. The windows and louvers can be seen above the front façade of Nos 5-6 when viewed from further away along the east side of Leicester Square. From here they do not appear alien or intrusive, but do break up the appearance of an otherwise blank wall. Their effect on the Conservation Area is therefore neutral.
24. I am therefore satisfied that the removal of Condition 16 and consequently allowing windows and louvers in the north-east and north-west elevations of Nos 1-4 would not be harmful to the character or appearance of the Conservation Area, which would be preserved.

Conditions

25. Having concluded that Condition 16 is neither reasonable nor necessary, I am minded to allow the appeal and will move on to consider which of the conditions on planning permission 15/11645/FULL are reasonable and necessary, having regard to the tests set out in the Framework and the PPG. I have amended the conditions where appropriate for the sake of clarity and precision, whilst also having regard to the fact that construction works to implement the scheme are already underway. I have removed Conditions 17 and 18, as it was agreed at the hearing that these were unnecessary duplicates.

26. A condition specifying the approved plans is needed in the interests of certainty. A requirement to use matching materials is justified to protect the appearance of the building.
27. Several of the conditions require submission and agreement of detailed aspects of the scheme before works begin on a particular part of the development. These include details of the windows, the hotel and retail entrances, waste storage and recycling facilities, noise levels associated with plant and machinery, and equipment to deal with cooking smells. Whilst I saw the windows on the north-east and north-west elevations are already in place, I am not in a position to judge whether or not other specific elements of the works have begun and no works programme was provided.
28. As the disputed windows and louvers have already been installed, I consider it essential that their details are submitted to the Council as soon as possible in order to secure its agreement or amendment to them, in order to protect the appearance of the building. I have therefore imposed a condition requiring submission of these details within one month of the date of this decision.
29. Facilities for the storage of general waste, food waste and recyclable materials are essential to ensure effective waste management and to protect the environment. I have imposed a condition requiring submission of these details within a month, as it may be necessary to make amendments to the proposed layout of the ground and ninth floors in order to meet the Council's requirements.
30. Conditions requiring approval of other details should be submitted within two months of this decision, or earlier if works relating to that part of the development are planned to commence earlier. All these conditions require the details to be approved in writing by the local planning authority and to be implemented as approved before the development can be brought into use.
31. The requirements in relation to the windows, louvers, hotel and retail entrances are justified in the interests of the appearance of the building and the wider Conservation Area. The requirements in relation to the maximum acceptable noise levels associated with the plant and machinery are necessary in order to protect the environment and the living conditions of people in the surrounding area. At the hearing the Council indicated that part (3) of its Condition 6 was optional. As it is not essential I have not imposed it. The requirements in relation to equipment to deal with cooking smells are needed to protect the environment and living conditions of people in the surrounding area.
32. Conditions restricting the hours of construction work and preventing unacceptable vibrations through adjoining structures and premises are justified to protect the living conditions of nearby occupants. In the interests of public safety no door or gate must open across or over a road or pavement.
33. Given the absence of parking on the site and the restricted vehicular access in the area around the hotel, conditions seeking to prevent coach parties delivering guests to the hotel and securing a servicing management plan are reasonable to prevent traffic congestion in the vicinity of the site. Provision of cycle parking is required to promote the use of sustainable modes of transport by staff and guests.

34. Conditions preventing the use of the hotel's food and beverage facilities as an independent enterprise, and restricting the hours that they are available to non-residents, are necessary to protect the character of the area and the living conditions of adjoining occupiers.

Conclusion

35. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition, but retaining the relevant non-disputed conditions from the previous permission, rewording them for the reasons set out above.

Sheila Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Patrick Daly BA(Hons) MSc MRTPI	DPP
Katy Walker MRICS RTPI(Assoc)	Criterion Capital

FOR THE LOCAL PLANNING AUTHORITY

David Dorward BA(Hons) MRTPI	Area Planning Officer
Max Jones	Planning Officer

INTERESTED PERSONS

Sam Hine BSc(Hons) MPhil MRTPI	DP9 Representing London and Regional
Geoff Springer	Development Director London and Regional Properties

DOCUMENT

Extract from the London Plan Map 2.3 referred to in Policy 2.10

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out strictly in accordance with the following approved plans:

6489-P-G100-MP-00 (Site Plan)
6489-P-G200-XE-NWNE (Existing North East and North West Elevations)
6489-P-G200-XE-SESW (Existing South East and South West Elevations)
6489-P-G200-XP-00 (Existing Ground Floor Plan)
6489-P-G200-XP-01 (Existing First Floor Plan)
6489-P-G200-XP-02 (Existing Second Floor Plan)
6489-P-G200-XP-03 (Existing Third Floor Plan)
6489-P-G200-XP-04 (Existing Fourth Floor Plan)
6489-P-G200-XP-05 (Existing Fifth Floor Plan)
6489-P-G200-XP-06 (Existing Sixth Floor Plan)
6489-P-G200-XP-07 (Existing Seventh Floor Plan)
6489-P-G200-XP-08 (Existing Eighth Floor Plan)
6489-P-G200-XP-09 (Existing Ninth Floor Plan)
6489-P-G200-XP-RF (Existing Roof Plan)
6489-P-G200-XS-AA (Existing Section AA)
6489-P-G200-XP-BB (Existing Section BB)
6489-P-G200-E-NE (Proposed North East Elevation)
6489-P-G200-E-NE-01 P2 (North East Elevation)
6489-P-G200-E-NW (Proposed North West Elevation)
6489-P-G200-E-NW-01 P3 (North West Elevation)
6489-P-G200-E-SE (Proposed South East Elevation)
6489-P-G200-E-SE-01 P4 (South East Elevation)
6489-P-G200-E-SW (Proposed South West Elevation)
6489-P-G200-E-SW-01 P2 (South West Elevation)
6489-P-G200-P-00 (Proposed Ground Floor Plan)
6489-P-G200-P-01 (Proposed First Floor Plan)
6489-P-G200-P-02 (Proposed Second Floor Plan)
6489-P-G200-P-03 (Proposed Third Floor Plan)
6489-P-G200-P-04 (Proposed Fourth Floor Plan)
6489-P-G200-P-05 (Proposed Fifth Floor Plan)
6489-P-G200-P-06 (Proposed Sixth Floor Plan)
6489-P-G200-P-07 (Proposed Seventh Floor Plan)
6489-P-G200-P-08 (Proposed Eighth Floor Plan)
6489-P-G200-P-09 (Proposed Ninth Floor Plan)
6489-P-G200-P-09-01 P1 (Level 09 Plan)
6489-P-G200-P-RF (Proposed Roof Floor Plan)
6489-P-G200-P-RF-01 P1 (Roof Plan)
6489-P-G251-D-001 (Proposed Hotel Entrance)
6489-P-G251-D-004 (Proposed Section Hotel Entrance)
6489-P-G200-S-CC (Proposed Section CC)
6489-P-G200-S-DD (Proposed Section DD)
6489-P-G300-A-003 (Proposed Section EE)
6489-P-G300-A-004 (Proposed Section FF)

2. Other than to comply with differences set out on the approved plans and Conditions 3 and 4 in this permission, all materials to be used in the external surfaces of the development hereby permitted shall match the existing those used on the existing building.

3. Within one month of the date of this decision detailed drawings (minimum 1:10 with section details at 1:2) of the windows and louvers shall be submitted in writing to the local planning authority. The development shall not be brought into use until the details of the windows and louvers have been approved in writing by the local planning authority and implemented in accordance with those approved details.
4. Prior to commencement of works to provide facilities for the storage of waste and recyclable materials on the site, or within one month of the date of this decision, details of those proposed facilities shall be submitted to the local planning authority. The development shall not be brought into use until such details have been approved in writing by the local planning authority and implemented in accordance with those approved details. The facilities for storage of waste and recyclables shall be retained at all times for that purpose and shall be available for everyone using the hotel. All waste and recyclable material must be stored inside the building and only put out just before it is due to be collected.
5. Prior to commencement of works on the new hotel entrance and new retail entrance or within two months of the date of this decision, whichever is the earlier, detailed drawings of these elements of the scheme shall be submitted to the local planning authority. The development shall not be brought into use until such details have been approved in writing by the local planning authority and implemented in accordance with those approved details.
6. Prior to installation of the proposed plant and machinery referred to in Conditions 7 and 8, or within two months of the date of this decision, whichever is earlier, a supplementary acoustic report shall be submitted to the local planning authority, demonstrating that the proposed plant and machinery will comply with the noise criteria set out in those conditions. The development shall not be brought into use until those details have been agreed in writing by the local planning authority and installed in accordance with those approved details. The plant and machinery shall be retained thereafter as approved throughout the lifetime of the development.
7. Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10dB below the minimum external background noise, at a point 1m outside any residential or other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background noise level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.
8. Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15dB below the minimum external background noise, at a point 1m outside any residential or other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background noise level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.
9. Prior to commencement of works to install the means of dealing with cooking smells arising from the hotel's food and beverage area, or within two months of the date of this decision, full details of these facilities shall be submitted to the local planning

authority. The development shall not be brought into use until such details have been approved in writing by the local planning authority and implemented in accordance with those approved details. The equipment shall be retained thereafter and fit for purpose for as long as the hotel food and beverage area is in use.

10. With the exception of those shown on the approved drawings, no structures such as canopies, fences, loggias, trellises, satellite or radio antennae, machinery or associated equipment, ducts, tanks or roof terraces shall be placed anywhere on the roof.
11. Building works which can be heard at the boundary of the site must only be carried out:
 - a) Between 0800 and 1800 hours Monday to Friday;
 - b) Between 0800 and 1300 hours on Saturday; and
 - c) At no time on Sundays, bank holidays or public holidays.
12. No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of the development hereby permitted so as to cause a vibration dose value of greater than 0.4m/s(1.75) 16 hour day-time nor 0.26m/s (1.75) 8 hour night-time as defined by BS 6472(2008) in any part of a residential or other noise sensitive property.
13. No gate or door may be hung in such a way as to open over or across a road or pavement.
14. Prior to the occupation of the hotel hereby permitted the cycle parking spaces shown on the approved drawings must be provided. The cycle parking spaces must be retained thereafter and the space used for no other purpose without the prior written consent of the local planning authority.
15. The hotel use hereby permitted shall not be occupied until a servicing management plan has been submitted to and approved in writing by the local planning authority. Thereafter all servicing must be carried out in accordance with the approved plan.
16. The hotel shall not knowingly accept bookings from parties using a vehicle with a capacity of 14 or more persons to travel to and from the premises.
17. The food and beverage area indicated on the proposed ninth floor plan 6489-P-G200-P-09 P1 shall primarily be used in conjunction with and ancillary to the use of the building as a hotel.
18. Customers (other than hotel guests staying overnight) shall not be permitted within the hotel's food and beverage area before 07.00 hours or after 0100 hours each day.