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## Appeal Decisions

Site visit made on 28 November 2017

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

**Decision date: 4<sup>th</sup> January 2018**

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### **Appeal A Ref: APP/X5990/W/17/3181758**

**39 Frith Street, London, W1D 5LL**

- 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 Jim Hwang against the decision of City of Westminster Council.
  - The application Ref 17/03249/FULL, dated 13 April 2017, was refused by notice dated 15 June 2017.
  - The development proposed is Use of part ground and the entire first, second and third floors as visitor accommodation (Class C1).
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### **Appeal B Ref: APP/X5990/Y/17/3181759**

**39 Frith Street, London, W1D 5LL**

- 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 Jim Hwang against the decision of City of Westminster Council.
  - The application Ref 17/03250/LBC, dated 13 April 2017, was refused by notice dated 15 June 2017.
  - The works proposed are internal alterations at the first, second and third floor levels including the removal and installation of internal partitioning, alterations to windows staircase and doorframes. Alterations including the removal internal plasterboard partitioning.
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#### **Decision – Appeal A**

1. The appeal is dismissed.

#### **Decision – Appeal B**

2. The appeal is dismissed.

#### **Procedural Matters**

3. The Council have cited separate reasons for refusal within their decisions for each appeal reflective of the relevant regulatory requirements. For appeal A, this relates to the loss of one residential unit and waste disposal, for appeal B this relates to harm upon the special character of the listed building. While the physical alterations to the building would not, in themselves, require planning permission, in considering whether to grant planning permission for the change of use, for which the works form a part of that, I have a statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which in possess. I have therefore considered the applications together.

4. I have taken the descriptions of the development and works from the Council's decision notice, as these are more precise than the description given in the original application form and appeal forms.
5. Specifically, the Council amended the descriptions, reflecting those elements of the works which required listed building consent only, and the change of use which required planning permission only. The Council also considered that the proposed use would be for visitor accommodation, rather than as a hotel. This was due to a lack of supporting functions such as a reception, restaurant etc. Rooms within the property would be let via websites such as Airbnb on a room only basis and there would be no communal shared facilities. The Council's assessment of the use as visitor accommodation more appropriately describes the proposal and I have therefore considered the appeals on this basis as no party would be prejudiced by my taking this course of action.

### **Main Issues**

6. The main issues are:
  - (a) whether the proposed works and development would preserve the grade II listed building or any features of special architectural or historic interest that it possesses (Appeals A and B);
  - (b) the effect of the proposed development upon the supply of housing (Appeal A); and,
  - (c) whether provision for the storage of waste and refuse would be adequate (Appeal A).

### **Reasons**

#### *Heritage Assets*

7. The appeal property is a 4 storey mid-terraced property, built in London yellow stock brick with glazing bar sash windows (recessed to the second and third floors) and parapet with coping and sill bands. There is a modern shop front to the ground floor with separate side entrance. The property is grade II listed with No 40, next door and forms part of a wider row, developed in 1743 by John Balgrave. The listing description notes internal features including the dog leg staircase and elements of cornices and panelling within No 39.
8. The site is located within the Soho Conservation Area (CA), this area was developed after the 1660's as a residential area, and comprises of high density terraced properties dating from the 17<sup>th</sup> and 18<sup>th</sup> Centuries laid out in formal blocks as part of the parish of St Anne as a single estate for the Earl of Portland, in contrast to the piecemeal development of the same period within the adjacent St James' Parish, due to different land ownership (also in the CA).
9. The significance of the building is therefore derived from its architectural interest as a typical example of a Georgian development as well as its historic significance as part of the 17<sup>th</sup> and 18<sup>th</sup> Century development of Soho. For this reason it makes a positive contribution to the CA.
10. The proposed works would involve the removal of internal walls and sub-division to create 2 ensuite bedrooms to each floor. It has been clarified by the appellant that the existing staircase would be refurbished, with the removal of boxing in and the repair of a number of the turned balusters and restoration of panelling to the staircase.

11. The property is of a modest scale and has been subject to a number of changes, particularly during the 20<sup>th</sup> Century. At my site visit I saw that the upper floors were in a poor state of repair. The plan form of the building has been altered and a chimney has been removed at some point. Historically the layout would have been likely to comprise of a main room to the front, with a small room to the rear and separate staircase wing. This is due to the constrained plot size within the wider terraced block and I agree with the Council that the layout forms part of the buildings special interest.
12. Today, the first floor remains the most intact, with an original door (albeit boarded over) and decorative architraves and original windows, shutters and skirting. Remnants of cornicing remain. The front room has been partitioned into two. The second floor has been subdivided into 3 rooms. Fragments of cornicing remain. To the third floor, there are internal timber partitions subdividing the floor into 4 rooms. A historic door and a historic cupboard is in place.
13. While the works would entail the restoration of the staircase and windows, and historic doors would be reused, there would be wholesale loss in respect of the layout of each floor in order to facilitate the letting bedrooms and ensuites. This would destroy any evidence of the layout of the building and would diminish the special architectural and historic interest of the dwelling.
14. There is a dispute between parties as to the whether the partitioning to the second and third floors is modern or historic. It is claimed that that these works date from the 1970s and while the appellant considers the LPA has not provided any evidence that partitioning is historic, as required by the National Planning Policy Framework (the Framework) the onus is on the appellant to provide sufficient detail to understand the potential impacts of the proposal on significance.
15. While the layouts of these floors have been altered, from my site inspection I am uncertain as to the age and thus the significance of this fabric, particularly at third floor level where the partition appeared to me to be of a greater age than is suggested. The plan form is discernible of an original arrangement, with the insertion of a bathroom. Without any evidence to the contrary, I consider that the loss of historic fabric and the effect on the spatial qualities of the historic domestic plan form of the building would cause harm.
16. At first floor level, the appellant now accepts that the partitioning is historic and likely to be contemporary with the date of the buildings construction. In order to preserve significance, it is proposed that the partitioning could be retained while still providing two single bedrooms and ensuite bathrooms. It is suggested that this could be secured by condition.
17. However, Planning Practice Guidance (PPG) states that *"If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes this may result in the need for a fresh planning application.....A condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used."*<sup>1</sup>

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<sup>1</sup> Paragraph: 012 Reference ID: 21a-012-20140306

18. To impose such a condition would involve a considerable change and I therefore do not consider that this could reasonably be conditioned. In light of the buildings listed status, it is also necessary to be able to fully consider the effect of any amended layout and the incorporation of 2 bedrooms and ensuite bathrooms at first floor level, prior to determination.
19. While I note that it would be intended to retain historic features such as cornicing and architraves, given the comprehensive scale of the works proposed and the proposed new layout, I consider that such remnants would be experienced further out of context to their original form. I note that historic doors would be retained, but these would be moved as part of the change in layout. This would also further confuse and compound the harm to the listed building in respect of the legibility and understanding of the building and its historic form and function.
20. Due to the intensity of the use with the need to provide services for 6 ensuite bathrooms, as well as any upgrading works in respect of fire and electrics, I agree with the Council that there are significant question marks as to the impact of such works. Such matters could not reasonably be dealt with by condition, since the absence of the nature and scope of the work at this stage means I cannot be confident as to the extent of any harm and any impact on the significance and special interest of the building.
21. The works would affect only part of the listed buildings and therefore in terms of the Framework the harm caused to the significance of the asset would be less than substantial. Paragraph 134 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal.
22. I accept that there would be benefits from the repair and restoration of some of the features of the building. As the works are confined to the interior of the building, I also agree that the character and appearance of the CA would be preserved. However in light of the harm I have identified, and in giving great weight to the conservation of the heritage assets, I consider that that this would not outweigh the identified harm.
23. Overall I conclude that the works fail to preserve the special architectural and historic interest of the grade II listed building. The proposals do not accord with Policies S25 and S28 of the revised Westminster City Plan 2016 (WCP) which seek to conserve heritage assets and promote design, which respects Westminster's heritage. The development and works do not also comply with saved Policy DES 10 of the City of Westminster Unitary Development Plan 2007 (UDP), which requires that works of alteration of listed buildings associated with a change of use may be permitted where the works do not adversely affect the architectural or historic interest of the building or its spatial integrity. The development and works also fail to accord with the Framework which seeks to conserve assets in a manner appropriate to their significance.

### *Housing Supply*

24. In accordance with planning law, applications and appeals must be determined against development plan policies unless material considerations indicate otherwise.

25. Policy 3.14 of the London Plan deals with the loss of housing, which it states should be resisted unless it is replaced at existing or higher densities with at least equivalent floorspace. Policy S14 of the WCP states that all residential uses and floorspace will be protected and that proposals that would result in a reduction of residential units will not be acceptable.
26. The appellant accepts that there is a conflict between the proposals and the above mentioned policy framework and has sought to justify the proposals in terms of its benefits with regard to the restoration and future maintenance and use of the listed building and conservation area, as well as benefits from increased tourism. It is also claimed that due to the constrained layout, it is further held that the property is not suitable for occupation as a single residential unit, nor is it suitable for conversion into 2 self-contained flats as they would not meet floorspace standards.
27. I note that at the time of my visit the uppers floors were vacant and, as stated above, are in a poor state of repair. However, there is no detailed evidence to support such claims that the property is not suitable for family occupation and I agree with the Council that this is similar to a number of other residential units in the area. I have also not been provided with any information in respect of space standards and why the property would not meet these.
28. As I have found above, while the proposals would preserve the character and appearance of the CA, the works would cause harm to the listed building and as such this is not a claim to which I can attach any weight. The proposed change of use would bring about economic benefits in respect of tourism. However, in light of the housing need and pressures, as clearly articulated within the plan, the creation of a short-term letting bedrooms would cause harm to the delivery of housing within the Borough.
29. In conclusion, I consider that the loss of a residential unit would have an adverse effect on the supply of housing which would not be justified by other material considerations. The proposals would conflict with LP Policy 3.14 and WCP Policy S14.

#### *Refuse Provision*

30. Due to the constrained nature of the site, there would be no dedicated refuse storage area for the letting bedrooms within the property. Waste would be left out on the pavement at night and collected daily, in the mornings.
31. While I appreciate the difficulties arising from waste storage for any use of the building, the creation of 6 individual lets would be likely to generate greater levels of waste than for the current extant residential use. I agree with the Council that this would be more difficult to manage without a central store, due to the different comings and goings of guests/occupants and more intensive nature of occupation.
32. This could give rise to significant impacts in respect of highway safety due to clutter and waste on the pavements, as well as environmental harm and harm to residential amenity. Given the site circumstances, the imposition of a condition would not overcome such objections.
33. Overall I consider that the development would not provide adequate provision for the storage of waste and refuse. The proposals would fail to accord with WCP Policies S23 and S24 which seeks to protect residential amenity in respect

of proposals for visitor accommodation and ensure appropriate service and delivery needs are met. The proposals would also conflict with saved Policies TACE2 and ENV12 of the City of Westminster Unitary Development Plan (UPD) 2007 which requires that all development must make provision for the storage of waste and where proposals for visitor accommodation would generate no adverse environmental and traffic effects.

### **Conclusion**

34. For the reasons given above, and having regard to all other matters raised, I conclude that both of the appeals should be dismissed.

*C Searson*

INSPECTOR