
Appeal Decisions

Site visit made on 25 June 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 30 August 2019

Appeal A - Ref: APP/X5990/W/19/3222805 116-118 Chancery Lane, London WC2A 1PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Dholak Properties Ltd against City of Westminster Council.
 - The application Ref: PT/18/09635/FULL, is dated 30 October 2018.
 - The development proposed is described as 'variation to scheme: 16/10409/FUL & 16/10731/LBC through the subdivision of the approved 4th and 5th Floor duplex flat and the provision of an additional flat on a new sixth floor'.
-

Appeal B - Ref: APP/X5990/Y/19/3222797 116-118 Chancery Lane, London WC2A 1PP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Dholak Properties Ltd against City of Westminster Council.
 - The application Ref: 18/09636/LBC is dated 30 October 2018.
 - The works proposed are described as 'variation to scheme: 16/10409/FUL & 16/10731/LBC through the subdivision of the approved 4th and 5th Floor duplex flat and the provision of an additional flat on a new sixth floor.'
-

Decision – Appeal A

1. The appeal is dismissed and planning permission is refused for variation to scheme: 16/10409/FUL & 16/10731/LBC through the subdivision of the approved 4th and 5th Floor duplex flat and the provision of an additional flat on a new sixth floor.

Decision - Appeal B

2. The appeal is dismissed and listed building consent is refused for variation to scheme: 16/10409/FUL & 16/10731/LBC through the subdivision of the approved 4th and 5th Floor duplex flat and the provision of an additional flat on a new sixth floor.

Preliminary Matters

3. An updated version of the National Planning Policy Framework (the Framework) was published in February 2019, after the original applications were submitted. However, the parties have had the opportunity to take account of any relevant changes during the course of the appeals.

4. The Council has indicated that had it been in a position to determine the applications, it would have refused planning permission and listed building consent because of its concerns about: the effects on a listed building and the character and appearance of the Strand Conservation Area (SCA); and, whether a sufficient contribution towards the provision of affordable housing would be made.
5. As the appeals relate to a listed building within a conservation area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also taken account of the guidance within section 16 of the Framework.

Main Issues

6. The main issues relating to these appeals are as follows:
 - Appeal A & B: whether the proposal would preserve the special interest of the host Grade II listed building at 116-118 Chancery Lane, the settings of adjacent listed buildings and whether it would preserve or enhance the character or appearance of the SCA.
 - Appeal A: whether there is sufficient information to assess if the proposal would make an appropriate contribution towards affordable housing.

Reasons

Listed building and the SCA

7. The appeal site, at 116-118 Chancery Lane, consists of a six storey Grade II listed office building, comprising a basement, ground floor and four upper floors. There is a shopfront at ground floor level. There are extant permissions/consents¹ dating from 2015, as amended in 2017, for the conversion of the building to provide 14 residential flats, which are in the process of being implemented. The appeal proposal is to subdivide the approved duplex flat on the fourth and fifth floor to create two one-bedroom self-contained flats and to add a further apartment on a new sixth floor, thereby creating 16 flats in total.
8. The appeal building was first listed in 1972. According to its list description, it dates from the early 19th century and once formed two houses. Its principal elevation fronts onto Chancery Lane. It has a relatively modest red-brick façade compared with the bolder, more ornate, classical designs of several of the adjacent listed buildings along the street. Nonetheless, its simple, reserved Georgian-style does exhibit architectural detailing including an impost-band and blind arcade features. It has sash windows and is finished with a slate tiled mansard roof containing three dormers.
9. Whilst of some depth, it is understood that the building was comprehensively redeveloped during the inter-war or post second world war eras, behind the retained historic façade, with little other evidence of its early 19th century fabric remaining. That later development, which included substantial changes to the roofscape, has minimal intrinsic architectural merit. That assessment appears to have already been acknowledged in the granting of the extant consents and has not been specifically disputed by the Council in relation to this appeal. I

¹ 15/01170/FUL, 15/01171/LBC as varied by 16/10409/FUL & 16/10731/LBC

see no reason to take a different view. Given the above, I find that the special architectural interest of the building lies principally in its simple, modest, early 19th century façade.

10. It also has a broader historic interest derived from its relationship with the listed and unlisted buildings in this part of the SCA, which are together testament to the development of this part of central London during the 19th and 20th centuries. The changes to the appeal building and some others illustrate the intensity of post-war development and are part of the historical and social narrative of the area.
11. Much of the development along Chancery Lane is more modest, with a finer grain and plot pattern, than some other parts of the SCA. The buildings along it are constructed of a variety of natural materials and are clearly distinct from each other in their details and design. There are also some more substantial, impressive listed buildings, such as The Law Society at Nos 110-113. Nevertheless, individually and collectively the listed buildings, including the appeal building, and other unlisted buildings have historic and architectural significance as part of the historic streetscape of the area. The significance of the SCA, insofar as it relates to the appeal proposal, is primarily associated with those elements.
12. The Council advises that the extant scheme, as amended, was accepted on the basis that the mansard roof element would not be higher than the existing roof. Taking account of the 20th century redevelopment, the Council considered that the extant scheme would not harm the listed building or the SCA.
13. However, the changes now proposed would add an additional floor. The appellant holds that the *'roof extension has been designed to be very subordinate to the existing building.'* Yet, it is apparent from the submitted plans, such as the drawing illustrating the north east elevation,² that the structure to the rear would rise significantly above the height of the historic façade of the appeal building and the immediately adjacent buildings.
14. Although mansard roofs are not uncommon in the area, the proposed mansard element would be substantial, stretching over three storeys. Its tower-like form protruding above the roofline would appear disproportionate in scale relative to the host building. Therefore, whilst it would be to the rear, its height, bulk and design would be unsympathetic to, and distract from, the early 19th century façade of the listed building. Its height and design would also compromise the settings of adjacent listed buildings along Chancery Lane.
15. The appellant has suggested that the proposal would not harm the listed building because it would not be visible in public views from ground level. However, listed buildings are protected for their inherent architectural and historic interest, irrespective of whether or not public views of the building can be gained. Whilst the appellant focusses on the contribution of the building's façade to its special interest, the entire building was listed as it was in 1972, and the more modern rear elements are at least illustrative of the inter or post-war development of the building and the area.
16. With regard to the setting of heritage assets, the Glossary to the Framework defines setting quite broadly as: *'the surroundings in which a heritage asset is*

² Drawing No: FLU.817.20

experienced.’ The Planning Practice Guidance (PPG) also advises that: ‘The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time.’³

17. In any case, given the height, massing and design of the proposed addition, it would be noticeable and likely to draw the eye from the upper floors of various surrounding buildings, including from those situated on the opposite side of Chancery Lane. There are taller buildings along Chancery Lane and in the wider area, but the appeal proposal and the adjacent listed buildings would be most readily perceived in their more immediate context. Given the above, the proposal would also have a degree of prominence within the SCA.
18. It is suggested by the appellant that *‘the proposal maintains the existing scale of development, acting as a transition from the taller buildings to the north of the site and the lower to the south.’* However, whilst there is some variation in roof heights along this part of Chancery Lane, the existing roof treatments do not noticeably detract from the setting of the host building and its façade or adjacent listed buildings. In contrast, the proposed height and bulk of the zinc mansard extension, with its lift over-run perched on top, would not, as is clear from the submitted plans, form part of any gradual transition. Rather, it would be markedly higher than most of its immediate neighbours, until one reaches the more conventionally designed mansard roof of 124 Chancery Lane.⁴ Overall, the proposal would result in an incongruous addition which would be out of keeping with the SCA.
19. Therefore, I conclude that the proposed development would fail to preserve the special interest of the host listed building and the settings of adjacent listed buildings. Consequently, in harming the historic street scene of this part of Chancery Lane, which makes a positive contribution to the wider SCA, it would fail to preserve or enhance the character or appearance of the SCA.
20. It follows that the proposal would conflict with policies S25 and S28 of the Westminster City Plan (November 2016) (WCP),⁵ which seek to ensure that development conserves and respects Westminster’s extensive heritage assets and meets exemplary standards of design. It would also fail to comply with similar aims in policies DES 1, DES 5 and DES 10 of the Council’s Unitary Development Plan (UDP)⁶ The relevant WCP and UDP policies appear to be broadly consistent with the Framework, notwithstanding that the UDP predates the publication of the original Framework in 2012.
21. The harm to the significance of designated heritage assets attracts great weight and importance. However, given that the relevant part of the site was largely redeveloped in the 20th century; that the development/works would be set back from the main historic façades along Chancery Lane and that public perception of the changes would be limited, I consider that the level of harm caused would, in the language of the Framework, be ‘less than substantial’.⁷ I will return to that aspect later in this decision.

³ Paragraph: 013 Reference ID: 18a-013-20190723

⁴ As shown in Drawing No Flu.817.20

⁵ Consolidated with all changes since November 2013

⁶ Adopted 24 January 2007

⁷ Paragraph 193

Affordable housing

22. The Council advises that the scheme already approved under the extant consents is subject to a s106 Agreement, which secured a payment in lieu of affordable housing on site of £460,000, in accordance with the requirements of WCP policy S16 and UDP policy H4, and as assessed by the Council's consultants. The sum was index-linked and resulted in a payment of £503,590.14 being received on 8 October 2018.
23. The appellant's position on whether such a further contribution is necessary appears to have evolved during the course of the application and appeal process. The Planning Design and Heritage Statement, submitted with the original application and this appeal, appears to accept that the appeal proposal is part of the larger scheme already approved and under construction, and indicates that a further affordable housing payment will be made, the sum to be agreed by negotiation.
24. It is clear, therefore, that even though the Council may not have raised the issue during the application process, the appellant anticipated that an affordable housing contribution was likely to be required.
25. However, the appellant's appeal statement suggests, with reference to paragraph 63 of the Framework, that as the proposal is for less than 10 units, it raises no affordable housing issues. In final comments, the appellant says that given the extent of the financial contribution already made, in relation to the approved scheme, it is questionable whether a further contribution is reasonable but that, if it is, it could be dealt with by means of a condition.
26. Although the appeal proposal was submitted as a stand-alone application, it effectively seeks to vary the amended scheme approved in 2017. That view is supported by the appellant's description of the proposal on the application forms and reference to it in the appellant's appeal statement.⁸ The submitted plans also relate to the scheme for the whole building. In effect, the proposal would lead to a net increase of residential units from the 14 already approved to 16. UDP policy H4, part (B)3 seeks to ensure that the relevant affordable housing thresholds are not avoided by the '*phasing of development.*'
27. Therefore, I agree with the Council that, in assessing whether there should be a further contribution to affordable housing, it is reasonable to consider the scheme as a whole, rather than segmenting it. Consequently, I also share the Council's view that the increase in units and floorspace would be likely to have some effect on the overall financial viability assessment of the scheme. However, no further up to date viability information has been submitted by the appellant during the appeal.
28. The PPG advises that '*Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.*'⁹
29. The PPG continues: '*However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be*

⁸ Paragraph 1.1

⁹ Paragraph: 010 Reference ID: 21a-010-20190723

entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).¹⁰

30. There has been ample time for further viability information or a deed of variation or relevant legal agreement to have been provided and no case for exceptional circumstances has been made. Moreover, I do not consider that the proposal falls into the category of a 'particularly complex' development scheme. Therefore, it would not be appropriate to attempt to deal with the matter by means of condition.
31. The appellant refers to another paragraph in the PPG which states that: '*No payment of money or other consideration can be positively required when granting planning permission. However, where the 6 tests will be met, it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure).*¹¹ An appeal decision¹² is also cited which includes a pre-commencement condition relating to a financial payment. However, affordable housing does not fall into the suggested category of supporting infrastructure.
32. Given the above, I conclude that insufficient information has been provided to determine whether the proposal would make an appropriate contribution towards affordable housing, as required by the development plan policies already referred to and paragraph 64 of the Framework.

Other Matters

33. Of the various development plan policies referred to by the Council, I have only cited those which I consider most directly relevant to the appeal proposal in this decision.

Conclusions – Appeal A and Appeal B

34. Paragraph 193 of the Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. Furthermore, Framework paragraph 194 advises that any harm to or loss of the significance of a designated heritage asset from its alteration or destruction or from development within its setting should require clear and convincing justification.
35. Therefore, the 'less than substantial' harm already identified attracts great weight in the balance. Nonetheless, in such circumstances Framework paragraph 196 advises that the 'less than substantial' harm to the significance of designated heritage assets should be weighed against the public benefits of the proposal, which includes the securing of the optimum viable use of listed buildings. Paragraph 192 of the Framework also advises that in determining applications, account should be taken of the desirability of sustaining and

¹⁰ Paragraph: 010 Reference ID: 21a-010-20190723

¹¹ Paragraph: 005 Reference ID: 21a-005-20190723

¹² APP/A3655/W/16/3143933

enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.

36. The appellant says that the proposal would put the listed building to a viable use consistent with its conservation and bring it back to its original use, presumably alluding to the fact that the listed building once formed two townhouses. However, the Council advises that the extant consents for the change of use from offices to residential were not based on securing a viable use, as the building was occupied at that time and the existing use as offices could have continued, which has not been disputed by the appellant. In any case the extant consents/permissions allow for the conversion to residential flats, and there is no compelling evidence to suggest that two further flats are required to secure the future viability of that changed use. Therefore, I give little weight to that proposition.
37. Whilst replacing the existing ad-hoc utilitarian roof structure may be of some benefit, that would also be achieved under the extant consents/permissions, which are in the process of being implemented, without occasioning the harm entailed by the appeal proposal. Therefore, that has limited weight as a public benefit.
38. There would be a public benefit in the provision of 2 additional housing units, above the 14 units being provided under the extant scheme which has commenced. The appellant refers to paragraph 68 of the Framework which recognises the important contribution that small and medium sized sites can make to the housing requirement of an area. Although it has not been suggested that there is a shortfall in the Council's 5-year housing land supply (HLS), and accepting that all contributions have a value, the addition of 2 flats would not make a significant difference to the HLS. Therefore, I give limited weight to that benefit.
39. The financial contribution towards affordable housing, made in respect of the extant permissions is of clear public benefit. However, that benefit has already been realised and paid in respect of the extant scheme which is currently in the process of being implemented. As I have already found, it is unclear whether the proposed variation to that scheme would require a further affordable housing contribution to be made. If it was necessary, that would offer a further potential public benefit. However, as there is no legal agreement or deed of variation in place to secure it, any additional benefit is negated. In any case such payments would not normally legitimise causing harm to designated heritage assets.
40. Overall, therefore, I conclude that the proposal would fail to preserve the special architectural and historic interest of the Grade II listed building and the settings of adjacent listed buildings. It would also fail to preserve the character and appearance of the SCA. The harm would not be outweighed by the limited public benefits and there is no persuasive evidence to suggest that the proposal is necessary to secure the optimum viable use of the building. Therefore, the proposal would not satisfy the requirements of the Act, paragraph 192 of the Framework or the development plan policies already referred to.

Overall Conclusion

41. For the reasons set out above and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed, and planning permission and listed building consent refused.

JP Tudor

INSPECTOR