



Appeal Decisions

Site visit made on 13 October 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 February 2021

Appeal A – Ref: APP/K5600/W/20/3253292

17 Cranley Place, London SW7 3AE

- 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 Mr David Bizer against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/20/00047, dated 21 December 2019, was refused by notice dated 6 March 2020.
 - The application sought planning permission for: *General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement* without complying with a condition attached to planning permission Ref: PP/18/08436, dated 24 June 2019.
 - The condition in dispute is No 2 which states that: Compliance with approved drawings. *The development shall not be carried out except in complete accordance with the details shown on submitted plans CP.OB.01; CP.PS.01A; CP.ES.01; CP.EE.01; P.EE.02; CP.PE.01; CP.PE.02; CP.EP.01A; CP.EP.02; CP.EP.03; CP.EP.04; CP.EP.05; CP.EP.06; CP.PP.01B; CP.PP.02B; CP.PP.03B; CP.PP.04B; CP.PP.05C; CP.PP.06; CP.ME.01C; CP.ME.02B; CP.ME.03B; CP.ME.04B; CP.ME.05B; CP.ME.06A; CP.DT.01; CP.DT.02A; CP.DT.06; CP.DT.10; CP.DT.11; CP.DT.12A; CP.DT.12.1; CP.DT.12.3; CP.DT.13; CP.DT.14; CP.DT.15; CP.DT.16.*
 - The reason given for the condition is: *The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.*
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Appeal B – Ref: APP/K5600/Y/20/3253298

17 Cranley Place, London SW7 3AE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
- The appeal is made by Mr David Bizer against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref: LB/20/00052, dated 21 December 2019, sought to vary condition No 3 of a listed building consent Ref: LB/18/08437 granted on 24 June 2019.
- The works proposed are: *General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement.*
- The condition in dispute is No 3 which states that: Unique Condition – Submission of details. *Notwithstanding the details on the approved drawings, detailed drawings or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun, and the works shall not be carried out other than in accordance with the*

details so approved and shall thereafter be so maintained: (a) detailed section drawings (scale 1:5) of the existing and proposed flooring / floor build-up, including the relationship between the coverings and the adjacent doors, architraves, skirting boards and railings; (b) detailed drawings showing all existing and proposed service runs; (c) a sample of the glass to be used for the new glass floor and roof over the rear lightwell; (d) detailed elevation (scale 1:10) and section (scale 1:5) drawings of the proposed doors and architraves; (e) detailed elevation (scale 1:10 or 1:20) and section (scale 1:5) drawings of the proposed rear conservatory; (f) samples of the stone paving to be used within the rear lightwell.

- The reason for the condition is: *In order to safeguard the special architectural or historic interest and heritage significance of the building and comply with policy CL4 of the Consolidated Local Plan.*
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Appeal C – Ref: APP/K5600/W/20/3254321 17 Cranley Place, London SW7 3AE

- 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 Mr David Bizer against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/20/00064, dated 21 December 2019, was refused by notice dated 24 March 2020.
 - The application sought planning permission for: *General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement* without complying with a condition attached to planning permission Ref: PP/18/08436, dated 24 June 2019.
 - The condition in dispute is No 2 which states that: *Compliance with approved drawings. The development shall not be carried out except in complete accordance with the details shown on submitted plans CP.OB.01; CP.PS.01A; CP.ES.01; CP.EE.01; P.EE.02; CP.PE.01; CP.PE.02; CP.EP.01A; CP.EP.02; CP.EP.03; CP.EP.04; CP.EP.05; CP.EP.06; CP.PP.01B; CP.PP.02B; CP.PP.03B; CP.PP.04B; CP.PP.05C; CP.PP.06; CP.ME.01C; CP.ME.02B; CP.ME.03B; CP.ME.04B; CP.ME.05B; CP.ME.06A; CP.DT.01; CP.DT.02A; CP.DT.06; CP.DT.10; CP.DT.11; CP.DT.12A; CP.DT.12.1; CP.DT.12.3; CP.DT.13; CP.DT.14; CP.DT.15; CP.DT.16.*
 - The reason given for the condition is: *The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.*
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Appeal D – Ref: APP/K5600/Y/20/3254325 17 Cranley Place, London SW7 3AE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
- The appeal is made by Mr David Bizer against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref: LB/20/00066, dated 21 December 2019, sought to vary condition No 3 of a listed building consent Ref: LB/18/08437 granted on 24 June 2019.
- The works proposed are: *General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement.*
- The condition in dispute is No 3 which states that: *Unique Condition – Submission of details. Notwithstanding the details on the approved drawings, detailed drawings or samples of materials as appropriate, in respect of the following, shall be submitted to*

and approved in writing by the local planning authority before the relevant part of the work is begun, and the works shall not be carried out other than in accordance with the details so approved and shall thereafter be so maintained: (a) detailed section drawings (scale 1:5) of the existing and proposed flooring / floor build-up, including the relationship between the coverings and the adjacent doors, architraves, skirting boards and railings; (b) detailed drawings showing all existing and proposed service runs; (c) a sample of the glass to be used for the new glass floor and roof over the rear lightwell; (d) detailed elevation (scale 1:10) and section (scale 1:5) drawings of the proposed doors and architraves; (e) detailed elevation (scale 1:10 or 1:20) and section (scale 1:5) drawings of the proposed rear conservatory; (f) samples of the stone paving to be used within the rear lightwell.

- The reason for the condition is: *In order to safeguard the special architectural or historic interest and heritage significance of the building and comply with policy CL4 of the Consolidated Local Plan.*
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Appeal E – Ref: APP/K5600/W/20/3254469

17 Cranley Place, London SW7 3AE

- 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 Mr David Bizer against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/20/00059, dated 21 December 2019, was refused by notice dated 30 March 2020.
 - The application sought planning permission for: *General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement* without complying with a condition attached to planning permission Ref: PP/18/08436, dated 24 June 2019.
 - The condition in dispute is No 2 which states that: *Compliance with approved drawings. The development shall not be carried out except in complete accordance with the details shown on submitted plans CP.OB.01; CP.PS.01A; CP.ES.01; CP.EE.01; P.EE.02; CP.PE.01; CP.PE.02; CP.EP.01A; CP.EP.02; CP.EP.03; CP.EP.04; CP.EP.05; CP.EP.06; CP.PP.01B; CP.PP.02B; CP.PP.03B; CP.PP.04B; CP.PP.05C; CP.PP.06; CP.ME.01C; CP.ME.02B; CP.ME.03B; CP.ME.04B; CP.ME.05B; CP.ME.06A; CP.DT.01; CP.DT.02A; CP.DT.06; CP.DT.10; CP.DT.11; CP.DT.12A; CP.DT.12.1; CP.DT.12.3; CP.DT.13; CP.DT.14; CP.DT.15; CP.DT.16.*
 - The reason given for the condition is: *The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.*
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Appeal F – Ref: APP/K5600/Y/20/3254474

17 Cranley Place, London SW7 3AE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
- The appeal is made by Mr David Bizer against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref: LB/20/00060, dated 21 December 2019, sought to vary conditions Nos 3 and 4 of a listed building consent Ref: LB/18/08437 granted on 24 June 2019.
- The works proposed are: *General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement.*

- The conditions in dispute are Nos 3 and 4 which state that: Condition 3- Unique Condition – Submission of details. *Notwithstanding the details on the approved drawings, detailed drawings or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun, and the works shall not be carried out other than in accordance with the details so approved and shall thereafter be so maintained: (a) detailed section drawings (scale 1:5) of the existing and proposed flooring / floor build-up, including the relationship between the coverings and the adjacent doors, architraves, skirting boards and railings; (b) detailed drawings showing all existing and proposed service runs; (c) a sample of the glass to be used for the new glass floor and roof over the rear lightwell; (d) detailed elevation (scale 1:10) and section (scale 1:5) drawings of the proposed doors and architraves; (e) detailed elevation (scale 1:10 or 1:20) and section (scale 1:5) drawings of the proposed rear conservatory; (f) samples of the stone paving to be used within the rear lightwell.* Condition 4- Unique Condition – New door between the front rooms at third floor level. *The new single-door and architrave, which are proposed within the new opening between the front rooms (T.05 and T.06) at third floor level must be installed in their correct positions within 1 month of the date of the creation of this opening and shall thereafter be maintained.*
 - The reasons for the conditions are: Condition 3- *In order to safeguard the special architectural or historic interest and heritage significance of the building and comply with policy CL4 of the Consolidated Local Plan.* Condition 4- *In order to safeguard the special architectural or historic interest and heritage significance of the building and comply with policy CL4 of the Consolidated Local Plan.*
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Decisions

1. **Appeals A and B** – The appeals are dismissed.
2. **Appeals C and D** – The appeals are dismissed.
3. **Appeal E** – The appeal is allowed and planning permission is granted for general restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement, at 17 Cranley Place, London SW7 3AE, in accordance with the application Ref: PP/20/00059 dated 21 December 2019, without compliance with condition number 2 previously imposed on planning permission Ref: PP/18/08436, dated 24 June 2019 and subject to the conditions in Schedule 1 attached.
4. **Appeal F** – The appeal is allowed and listed building consent is granted for general restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement, at 17 Cranley Place, London SW7 3AE, in accordance with the application Ref: LB/20/00060 dated 21 December 2019, without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref: LB/18/08437, dated 24 June 2019 and subject to the conditions in Schedule 2 attached.

Procedural Matters

5. The six appeals concern three elements of proposed development and works within the same building which have been submitted by the same appellant under different, complementary legislation. Therefore, to avoid duplication, I have dealt with all of the appeals together in a single decision letter.

6. I note that the Council's reason for refusal for both of the applications relating to Appeals E and F¹ refer to the 'proposed second floor doorway', whereas, the descriptions of development and works refer to the 'opening at third floor'. I have taken the reference in the reason for refusal to be an error and determined Appeals E and F on the basis of the submitted plans.

Background and Main Issues

7. The appeals relate to amendments to a scheme that was granted planning permission and listed building consent on 24 June 2019².
8. The proposed development and works in Appeals A and B comprise the enlargement of the existing opening between the kitchen and conservatory at ground floor level³. The proposed development and works in Appeals C and D involve the installation of glazing at upper ground floor level over the lightwell between the conservatory and rear elevation⁴. The proposed development and works in Appeals E and F comprise the enlargement of the approved opening at third floor level between the study and bedroom 2⁵.
9. The proposals require the plans condition of the approved planning permission (condition No 2 for Appeals A, C and E) and unique conditions of the approved listed building consent (condition No 3 for Appeals B, D and F and additionally condition No 4 for Appeal F) to be varied. The approved plans are referred to in condition No 2 of the planning permission. The approved plans are not referred to in conditions Nos 3 and 4 of the listed building consent, but they are stated within the Council's decision notice for the application.
10. The reason for imposing condition No 2 in the approved planning permission was that the details are material to the acceptability of the proposals, and to ensure accordance with the development plan. The reason for imposing conditions Nos 3 and 4 in the approved listed building consent was in order to safeguard the special architectural or historic interest and heritage significance of the building and comply with policy CL4 of the Consolidated Local Plan.
11. The appeal property forms part of a Grade II listed terrace (Nos 11-19 Cranley Place, Nos 11-19 consecutive) and is located within the Thurloe Estate and Smith's Charity Conservation Area (the CA). The Council's reason for refusal for all of the applications relate to the alleged effect of the development and works on the special interest of the listed building.
12. Given the type of the appeals and the subject of the works, I have had regard to the Court of Appeal judgement *Finney v Welsh Ministers* (2019) EWCA Civ 1868⁶ (the Finney judgement). That case concerned the limits of the power under section 73 of the Town and Country Planning Act 1990 (the TCPA) to grant planning permission for development without complying with conditions subject to which a previous planning permission was granted. As in the appeals before me, it related to an application to amend a scheme by substituting a

¹ Application Refs: Ref: PP/20/00059 and LB/20/00060.

² Planning Permission Application Ref: PP/18/08436; Listed Building Consent Application Ref: LB/18/08437 – both granted on 24 June 2019 for General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout rearrangement.

³ Submitted Drawings: CP.KP.02; CP.KS.01; CP.KD.01.

⁴ Submitted Drawings: CP.CP.02; CP.CP.03; CP.CS.01; CP.CD.01.

⁵ Submitted Drawings: CP.TP.05; CP.TS.01; CP.TD.01.

⁶ Dated 5 November 2019.

plan or plans specified in a plans condition with new plans. Therefore, the Finney case is directly relevant to Appeals A, C and E and its effect and logic also need to be considered in relation to Appeals B, D and F to vary unique conditions which also relate to approved plans.

13. In the Finney judgement, the Court of Appeal refers to section 73(2) of the TCPA, which indicates that, when considering applications under section 73(1) for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted, the local planning authority must only consider the question of the conditions. As such, it cannot consider the description of the development to which the conditions are attached. The court found that the 'natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development.'⁷
14. Furthermore, the Finney judgement confirms that there should not be a conflict between what was permitted in the original consent and what the new condition requires. The description of development and works for the approved scheme is 'General restoration works and amendments consisting of lowering of garden to its original level, creation of bathroom within original scullery, french doors to dining room, alteration to conservatory and 3rd floor layout re-arrangement.'
15. I am satisfied that the proposed development and works under Appeals A, B, E and F would be contained within the original description of development and that there would be no conflict between what was approved as part of the original permission and consent and what the new conditions require. However, I question whether this would be the case in respect of the proposed development and works under Appeals C and D.
16. Given the relevance of the Finney judgement to Appeals C and D, both main parties have been given the opportunity to comment upon it in relation to these Appeals. A response was received from the appellant, but no comments were submitted by the Council. I have considered the appellant's comments in reaching my decisions in relation to Appeals C and D. I am satisfied that no party has been prejudiced by this approach.
17. In the context of the above, the main issues of the Appeals are:
 - **Appeals A and B** Whether or not the consequences of varying condition No 2 of the approved planning permission and condition No 3 of the approved listed building consent would preserve the Grade II listed building, Nos 11-19 Cranley Place, and any features of special architectural or historic interest that it possesses.
 - **Appeals C and D** Given the content of the Finney judgement, whether or not it is possible, in law, to amend the scheme by varying the plans condition attached to the approved planning permission and the unique condition attached to the approved listed building consent, in the way proposed.
 - **Appeals E and F** Whether or not the consequences of varying condition No 2 of the approved planning permission and conditions Nos 3 and 4 of the

⁷ Paragraph 42.

approved listed building consent would preserve the Grade II listed building, Nos 11-19 Cranley Place, and any features of special architectural or historic interest that it possesses.

Reasons

Special interest and significance

18. The appeal property, No 17 Cranley Place (No 17), is a residential dwelling that forms part of a Grade II listed terrace (Nos 11-19 consecutive). It is one of two facing terraces with Nos 1-10 Cranley Place (consecutive), which were built in the mid-19th century as a set piece by the speculative developer Sir Charles James Freaque on the Smith's Charity Estate.
19. The terrace is comprised of Classical London townhouses which are three storeys with basements and slated mansard roofs and constructed of Gault brick and stucco (ground floor only). To the front the properties possess Ionic porches, balconies and sash windows of different scales which indicate a vertical hierarchy of floors and rooms. The rear elevation of the row is modest in its detailing with exposed brick and closet wings. The terrace is extremely well conserved and has a richness and uniformity of architectural details appropriate to its Grade II status.
20. No 17 was converted into a guest house in the 1950s which involved a number of alterations to the internal fabric and original plan-form. From around the 1980s it appears that the building was used as a House of Multiple Occupation. Then in the mid-1990s permission was granted to revert the building back to a single residence, which included the replacement of historic fabric because of extensive dry rot damage and water ingress.
21. From the evidence before me, the special interest and significance of No 17 is largely derived from its historic interest in respect of its age, illustration of mid-19th century domestic architecture and association with Sir Charles James Freaque; along with its architectural interest in respect of its handsome Italianate frontage and the integral contribution it makes within the wider listed terrace. Whilst the building has undergone considerable change and adaptation in the past, its special interest and significance in so far as it relates to the appeals, is primarily associated with its historic and architectural integrity, to which its surviving historic fabric, legibility of its extant original plan-form and the formal hierarchy within its internal floors and rooms all contribute.
22. The site is also located within the CA which is predominantly residential with a large number of terraced properties dating from the Georgian and Victorian periods. While the surrounding terraces vary in terms of architectural style and scale, there is a great deal of uniformity and rich detail in the properties which contribute positively to the character and appearance, and thus the significance, of the CA.

Appeals A and B

Appeal proposal and its effects

23. The proposed development and works in Appeals A and B comprise the enlargement of the existing opening between the kitchen and conservatory at ground floor level. The enlargement would increase the size of the opening

from approximately 2250mm to 3379mm (approximately 560mm on either side).

24. There is inconsistency between the appellant's Heritage Statement (the HS) and appeal statement as to the date of the surviving fabric of the affected wall and its considered significance. The Morphological Plans in Appendix 2 of the HS state that the surviving parts of the wall date from the 1860s, but the appeal statement asserts that the surviving fabric is not historic, as much of it had to be replaced in 1996 because of dry rot and water ingress. In addition, the Drawings of Significance in Appendix 3 of the HS state that the surviving fabric in this location is of high significance, but the appeal statement declares that it is of medium significance.
25. Given that there is no substantive evidence before me which confirms that the surviving parts of the wall are not original and/or historic fabric, I concur with the conclusions of the HS in these regards.
26. I acknowledge that the proposal would not affect the unaltered frontage of the property or the group value of the terrace, where the appellant contends the significance of the building primarily resides, and that it would be in a location within the building which has already undergone considerable alteration. However, the surviving fabric of the wall is important in facilitating an understanding of the building's original layout. To my mind, this increases the heritage merit of the remaining fabric and the contribution it makes to the significance of the listed building.
27. The proposed development and works would result in the irreversible loss of additional historic fabric. Moreover, although argued to be modest in nature and including the retention of a downstand and wall nibs, this alteration would further diminish the separation of, and distinction between, the historic and modern spaces within the building at this level and contribute to the incremental erosion of its original plan-form.
28. In addition, the proposed architrave around the enlarged modern opening would result in the installation of an inappropriate architectural detail which would further blur the interpretation of the building's historic layout.
29. In view of the above, I find that the consequences of varying condition No 2 of the approved planning permission and condition No 3 of the approved listed building consent, would fail to preserve the Grade II listed building, Nos 11-19 Cranley Place, and any features of special architectural or historic interest that it possesses. This would be contrary to the requirements of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the PLBCAA). As such, the works would harm the special interest and significance of this designated heritage asset.

Public benefits

30. The statutory duties in sections 16(2) and 66(1) of the PLBCAA are matters of considerable importance and weight. Furthermore, Paragraph 193 of the National Planning Policy Framework 2019 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 194 goes on to advise that significance can be harmed or lost through the

alteration or destruction of those assets and that this should have clear and convincing justification.

31. With reference to Paragraphs 195 and 196 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the extent and relatively localised nature of the proposed development and works, I find the harm to be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 196 advises that this harm should be weighed against the public benefits of the proposal, which includes securing the building's optimum viable use.
32. I am mindful of the public benefits of the approved scheme as a whole, and note its positive effects in addressing alleged unauthorised and/or inappropriate works of the past and restoring the property to a high standard. Nevertheless, these factors would have informed the Council's assessment and determination of the approved scheme and any public benefits in these respects should not be double counted.
33. The appellant submits that the enlargement of the opening itself would provide several benefits including the reinstatement of the original walkway from the hallway through to the rear staircase into the garden, which is currently obstructed by a fitted kitchen island; better use of floor space within this part of the house; and an improved link between the kitchen and conservatory. It is declared that these, in turn, would improve the quality of residential accommodation and the long-term viability of the listed building in its optimum viable use as a single residential dwelling.
34. Nevertheless, these benefits would largely be of a private nature to the appellant. There is no substantive evidence before me which verifies the need for a wider opening in this location beyond the appellant's desire to alter the internal configuration of the kitchen. Moreover, I am not persuaded that the optimum viable use of the building as a single residential dwelling would be in jeopardy or would cease if the enlargement was not implemented, or that the same benefits could not be achieved by an alternative, less invasive, scheme.

Conclusion Appeals A and B

35. Given the above and in the absence of any substantiated public benefit, I conclude that, on balance, the consequences of varying condition No 2 of the approved planning permission and condition No 3 of the approved listed building consent, would fail to preserve the Grade II listed building, Nos 11-19 Cranley Place, and any features of special architectural or historic interest that it possesses.
36. Hence, the proposal would fail to satisfy the requirements of the PLBCAA and Paragraphs 192, 193 and 194 of the Framework. It would also conflict with Policy CL4 of The Royal Borough of Kensington and Chelsea Local Plan 2019 (RBK&CLP) which requires development to protect the heritage significance of listed buildings. As a result, the proposal would not be in accordance with the development plan.

Appeals C and D

The Finney judgement and the appeal proposal

37. As stated above, section 73(2) of the TCPA indicates that, when considering applications under section 73(1), the local planning authority must only consider the question of the conditions. As such, it cannot consider the description of the development to which the conditions are attached. Furthermore, the Finney judgement confirms that there should not be a conflict between what was permitted in the original consent and what the new condition requires.
38. The approved scheme includes the installation of glazing within a small lightwell at the rear of the main building, which provides a floor/walkway between the dining room and the conservatory and encloses the lower ground floor of the lightwell below.
39. Appeal C seeks to vary condition No 2 of the approved planning permission to allow for the installation of glazing at upper ground floor level over the lightwell between the conservatory and rear elevation. The glazed roof would sit within the existing building and boundary walls. It would be positioned over the approved floor/walkway and would have the effect of raising the covered area by one floor, creating an enclosed small extension.
40. I accept that, as highlighted by the appellant, the approved scheme permitted a glass roof over the lightwell which is referenced as 'alteration to conservatory' within the original description of development. However, although the appeal proposal is also a glass roof, its installation would mean that there would be an additional glass roof within the lightwell, which would go beyond what was previously granted permission.
41. Furthermore, whilst the appellant submits that the appeal proposal would fall within the same description of development of 'alteration to conservatory', given that the amendment would provide additional space and an extension within the lightwell at a higher level, I am not persuaded that this could reasonably be considered to come under this description.
42. Therefore, to my mind, there would be a conflict between the description of the permitted development, which the Finney judgement states cannot be altered via section 73, and what would be shown in the revised plans referred to in condition No 2. Given the description, such a condition, requiring the development to be carried out in accordance with plans showing the lightwell to be roofed over creating an enclosed small extension, would alter the nature of the development and be unlawful.
43. Although the appeal proposal is argued to be a modest amendment, I am not convinced that a condition referring to plans showing a proposed glazed roof at upper ground floor level can be reconciled with 'alteration to the conservatory' in the description. I consider the proposal to be a material change which, in my view, would lead to inconsistency between what would be required by the condition and the description.
44. Appeal D seeks to vary condition No 3 of the approved listed building consent which is a unique condition relating to submission of details. The proposed variation is *to allow glazing at upper ground floor over lightwell between*

conservatory and rear elevation, and the reference to the approved drawings within a condition in the decision notice⁸.

45. Section 19 of the PLBCAA allows for an applicant to apply to the local planning authority for the discharge or variation of conditions attached to a listed building consent, while section 20 allows an appeal against a decision to refuse such an application. Section 19(4) of the PLBCAA gives powers to the local planning authority or the Secretary of State to vary, discharge or add conditions. However, significantly, it does not give a power to amend anything other than a condition. That corresponds with similar limitations under section 73(2) of the TCPA, which gives the local planning authority the power to consider only the question of the conditions.
46. Given the above, although the Finney judgement relates to a section 73 application (which concerns planning permissions), it appears reasonable to apply its rationale to the section 20 application in relation to the listed building consent, as it is deeply analogous. The description of the works in the listed building consent is identical to that in the planning permission. Consequently, if condition No 3 was varied as requested by the appellant, there would be the same conflict between the reference in the description to 'alteration to conservatory' and what would be shown in the revised plans referred to in condition No 3. As above, such a condition, requiring the works to be carried out in accordance with plans showing the lightwell to be roofed over creating an enclosed small extension, would alter the nature of the works originally consented and be unlawful.
47. I note the appellant's comment regarding Appeal D and condition No 3 in relation to the Finney judgement that, as section (c) requires *a sample of the glass to be used for the new glass floor and roof over the rear lightwell*, the condition would not require amendment. Whilst this may be the case on the basis of the wording used, the submitted application did not request a variation to this section of condition No 3. As such, this is not determinative.
48. Therefore, based on relevant statute and the Finney judgement, even if the proposal were acceptable in respect of the listed building, as the descriptions of development and works cannot be altered, the appeal proposal would not be consistent with them. It follows that the appeals cannot succeed.
49. Consequently, I conclude that, as a matter of law and on the facts of Appeals C and D, it is not possible to amend the scheme by varying the plans condition attached to the approved planning permission and the unique condition attached to the approved listed building consent, in the way proposed.
50. Given my conclusion on this main issue, there would be no purpose in me considering the Council's original concerns relating to effects on the special interest of the listed building, as it would not alter the outcome of the appeals.

Appeals E and F

Appeal proposal and its effects

51. The approved scheme included the creation of a 900mm wide opening, with architrave and door, at third floor level between the study and

⁸ Taken from section 5 of the application form for application Ref: LB/20/00066.

bedroom 2 (rooms T.05 and T.06). The proposed development and works in Appeals E and F involve the enlargement of the approved opening to a width of 1400mm, with architrave but no door.

52. It is apparent from the submitted evidence and my observations on site that the existing partition between the two rooms is of modern construction, stated as being rebuilt at some point between 1957 and 1996, and does not lie on the same line of the original wall in this location. On this basis, I agree with the conclusion of the HS (Appendix 3) that the existing partition is of low significance.
53. Therefore, whilst the proposed increase in the size of the approved opening would lessen the cellular configuration of the rooms at third floor level to some degree, it would not involve the permanent loss of historic fabric. Furthermore, given that the increase in the size of the opening would be limited to approximately 500mm and that two-thirds of the existing partition would remain in situ, the size of the opening would not be overly excessive or dominant between the rooms. This would also still allow the hierarchical differentiation between the affected rooms and between the floors to be perceived and interpreted. As such, it would not lead to a materially adverse dilution of the building's historic plan-form or harm its significance in this respect.
54. In employing an honest approach to the creation of a new opening in this location, I have reservations about the installation of an architrave around it. However, I note that this approach was agreed to by the Council in the approved scheme. On this basis, this detail is accepted.

Conclusion Appeals E and F

55. Taking the above into account, I conclude that the consequences of varying condition No 2 of the approved planning permission and conditions Nos 3 and 4 of the approved listed building consent would preserve the Grade II listed building, Nos 11-19 Cranley Place, and any features of special architectural or historic interest that it possesses.
56. As such, the proposal would satisfy the requirements of sections 16(2) and 66(1) of the PLBCAA and Paragraphs 192, 193 and 194 of the Framework. It would also not conflict with Policy CL4 of the RBK&CLP as referred to above. As a result, the proposal would be in accordance with the development plan.

Other Matters – All Appeals

57. The appeal property is located within the CA. I have had regard to section 72(1) of the PLBCAA, which requires that special attention be given to the desirability of preserving or enhancing the character or appearance of the conservation area.
58. The historic integrity, architectural unity and well-preserved quality of Nos 11-19 Cranley Place contribute positively to the character and appearance of the CA as a whole and thereby to its significance as a designated heritage asset.
59. Bearing in mind the extent, nature and location of the development and works, the character and appearance of the CA as a whole would be preserved. I note

that the Council raised no objection in this regard either. Nevertheless, this lack of harm weighs neutrally and does not amount to a consideration in support of the appeals or alter my overall conclusions on the main issues.

60. My attention has been drawn to several other examples of alterations to listed buildings within the locale which have been granted planning permission and listed building consent by the Council⁹. I acknowledge that the approved development and works at 15 Cranley Place, 14 Cranley Place, 18 Cranley Place and 23 Onslow Gardens possess some parallels to the appeal proposals before me.
61. Nevertheless, whilst the relevant statutory duties contained within the PLBCAA have not changed, there have been significant and material changes in the national and local policy context within which the proposals are required to be assessed and determined. Namely, the publication of the Framework in 2012 (latest revision in 2019) and the adoption of the RBK&CLP in 2019. Given these material changes in circumstances, the previous grants of planning permission and listed building consent by the Council for development and works to other properties in the area are not, of themselves, reasons to allow the appeals.
62. I concede that the approved development and works at 7 Cromwell Place involving the covering of the lightwell at raised ground floor level has some similarities with Appeals C and D before me. However, similar to those cited above, it is the case that these applications were granted prior to the adoption of the RBK&CLP. Furthermore, the submitted section appears to show that the approved scheme involved the creation of a double height space within the lightwell rather than two enclosed areas at different levels as in Appeals C and D. As such, the approved development and works at 7 Cromwell Place are not directly comparable and can only be given limited weight.
63. In any event, I have assessed all of the appeals on their own merits. The existence of other development and works that have been approved by the Council at other listed properties along Cranley Place and within the surrounding area does not justify the acceptance of the identified harm.
64. I am aware that no concerns have been raised in relation to any harmful effects of any of the proposals on the living conditions of occupiers of neighbouring properties and I have no reason to disagree. Nevertheless, this weighs neither for nor against the appeals and does not alter my overall conclusions on the main issues.

Conditions – Appeals E and F

65. The appellant has submitted wording for how they wish the conditions to be varied. I have considered this in light of the advice set out in both the Framework and the Planning Practice Guidance.
66. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged¹⁰. As I have not

⁹ Application Refs: 15 Cranley Place PP/02/01484 and LB/02/01485; 14 Cranley Place PP/09/03038, LB/09/03039, PP/07/02561 and LB/07/02562; 18 Cranley Place PP/02/00985 and LB/02/00986; 23 Onslow Gardens PP/10/00151 and LB/10/00152; and, 7 Cromwell Place PP/15/07785 and LB/16/00876.

¹⁰ Planning Practice Guidance Paragraph: 015 Reference ID: 17a-015-20140306.

been provided with any information which confirms whether any of the conditions attached to the original permission and consent have been discharged, I have attached all of the previous conditions again, amending them where necessary to reflect the revised proposal and plans and/or in the interests of precision and clarity.

67. As applications under section 73 of the TCPA and section 19 of the PLBCAA cannot be used to vary the time limit for implementation of the development and works, specification of the date by which the permission and consent shall be begun is necessary.
68. A condition in the planning permission specifying the relevant plans is necessary as this provides certainty. I have corrected the reference to Plan CP.EE.02. I have also removed the original proposed third floor plan CP.PP.05C and included the revised plans CP.TP.05, CP.TS.01 and CP.TD.01. I have also clarified that the approved plan CP.ME.05B relates only to the M&E layout.
69. I have varied condition No 3 of the listed building consent as suggested by the appellant, with a slight amendment to the wording in the interests of clarity. However, I have not varied condition No 3 of the listed building consent as suggested by the appellant to include part (h), as it is not standard practice for a listed building consent to specify relevant plans and the approved plans are referenced in the associated planning permission.
70. Condition No 4 of the listed building consent relating to the opening between the front rooms at third floor level remains necessary to safeguard the special interest and significance of the building but, in the interests of precision and clarity, amendments have been made to the suggested wording.
71. The following conditions previously imposed on the original applications all remain necessary to safeguard the special architectural or historic interest and heritage significance of the building: matching materials; notification of the start of works; submission of details; new double-doors to lightwell; fire surrounds at the upper ground floor and first floor levels; removal of downlights; work to match retained fabric; pointing, re-pointing, and jointing; retention of fabric; demolition-protection of interior; pipework; services/pipes; and, partitions. However, amendments have been made to the wording of conditions numbers 5, 6 and 7 of the listed building consent in the interests of precision and clarity. The main parties were given the opportunity to comment on the suggested changes to these conditions and both confirmed that they were content with the revised wording.

Conclusion – All Appeals

72. For the reasons given above, I conclude that **Appeals A, B C and D** should be dismissed and **Appeals E and F** should be allowed. Therefore, a new planning permission and new listed building consent are granted in relation to Appeals E and F, subject to the schedules of conditions listed below.

F Cullen

INSPECTOR

Appeal E – Ref: APP/K5600/W/20/3254469

Conditions: Schedule 1.

- 1) **Time Limit** The development hereby permitted shall begin not later than 24 June 2022, which is the expiration date of the approved planning permission Ref: PP/18/08436.
- 2) **Compliance with approved drawings** The development shall not be carried out except in complete accordance with the details shown on submitted plans:

CP.OB.01; CP.PS.01A; CP.ES.01; CP.EE.01; CP.EE.02; CP.PE.01; CP.PE.02; CP.EP.01A; CP.EP.02; CP.EP.03; CP.EP.04; CP.EP.05; CP.EP.06; CP.PP.01B; CP.PP.02B; CP.PP.03B; CP.PP.04B; CP.PP.06; CP.ME.01C; CP.ME.02B; CP.ME.03B; CP.ME.04B; CP.ME.05B (in so far as it relates to M&E layout); CP.ME.06A; CP.DT.01; CP.DT.02A; CP.DT.06; CP.DT.10; CP.DT.11; CP.DT.12A; CP.DT.12.1; CP.DT.12.3; CP.DT.13; CP.DT.14; CP.DT.15; CP.DT.16; CP.TP.05; CP.TS.01; and, CP.TD.01.
- 3) **Materials - To match existing** All work and work of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture, profile and, in the case of brickwork, facebond and pointing, and shall be so maintained.

End of Conditions: Schedule 1

Appeal F – Ref: APP/K5600/Y/20/3254474

Conditions: Schedule 2.

- 1) **Time Limit** The works hereby permitted shall begin not later than 24 June 2022, which is the expiration date of the approved listed building consent Ref: LB/18/08437.
- 2) **Notification of start of works** No works shall commence under this listed building consent before written notification of the intended start of works has been provided to the local planning authority (*Town Hall, Hornton Street, London W8 7NX*) with such notification providing not less than 14 days notice prior to the commencement of works. For the period of 14 days before works commence, access shall be enabled to the building, on request from the local planning authority, to allow photographs and/or measured drawings to be undertaken.
- 3) **Unique Condition – Submission of details** Notwithstanding the details on the approved drawings, detailed drawings or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun, and the works shall not be carried out other than in accordance with the details so approved and shall thereafter be so maintained:

(a) detailed section drawings (scale 1:5) of the existing and proposed flooring / floor build-up, including the relationship between the coverings and the adjacent doors, architraves, skirting boards and railings;

- (b) detailed drawings showing all existing and proposed service runs;
- (c) a sample of the glass to be used for the new glass floor and roof over the rear lightwell;
- (d) detailed elevation (scale 1:10) and section (scale 1:5) drawings of the proposed doors and architraves;
- (e) detailed elevation (scale 1:10 or 1:20) and section (scale 1:5) drawings of the proposed rear conservatory;
- (f) samples of the stone paving to be used within the rear lightwell; and,
- (g) detailed drawings showing the enlarged opening at third floor between the front rooms (T.05 and T.06) shall be submitted in accordance with drawings CP.TP.05; CP.TS.01; and CP.TD.01.

- 4) **Unique Condition – New opening between the front rooms at third floor level** The new architrave, which is proposed around the new opening between the front rooms (T.05 and T.06) at third floor level must be installed in its correct position within 1 month of the date of the creation of this opening.
- 5) **Unique Condition – New double-doors to lightwell** The new double-doors which are proposed to be inserted between the main rear room (G.05) and rear lightwell at the upper ground floor level must be installed within their correct position within 1 month of the date of the creation of this opening.
- 6) **Fire surrounds at the upper ground floor and first floor levels** The proposed fire surrounds at the upper ground floor and first floor levels, shall be installed in their correct positions within 6 months of the works commencing, unless a variation to this time frame has otherwise been agreed by the local planning authority in writing.
- 7) **Removal of downlights** The existing downlights shall be removed and the approved ceiling works completed within 6 months of the works commencing, unless a variation to this time frame has otherwise been agreed by the local planning authority in writing.
- 8) **Work to match retained fabric** All new works and works of making good to the retained fabric, whether internal or external, shall be finished to match the adjacent work with regard to the methods used and to colour, material, texture, and profile.
- 9) **Pointing, re-pointing, and jointing** The mortar mix shall match the original construction mortar of the building with regard to the grading of the aggregate, finish, and colour. The mortar must be lime based (NHL as per EN459) with no cement content. The pointing profile shall match the original profile on the building. If the original pointing no longer exists, details of the re-pointing profile should be submitted to and approved in writing by the local planning authority before any such re-pointing takes place.
- 10) **Retention of fabric** All existing fabric including existing wall and ceiling plasterwork shall be retained, unless notated otherwise on the drawings approved under this consent.

- 11) **Demolition – Protection of interior** The interior features of the building shall be protected against accidental loss or damage during building work, and no features may be disturbed or removed temporarily or permanently except if so identified on the drawings forming part of this consent.
- 12) **Pipework** No plumbing or pipes other than rainwater pipes shall be fixed on the external faces of the building other than those shown on the drawings forming part of this consent.
- 13) **Services / pipes** All rainwater goods/guttering shall be black painted cast metal and so maintained.
- 14) **Partitions** All partitions hereby granted consent shall be of lightweight construction, easily removable, and be so maintained.

End of Conditions: Schedule 2.