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## Appeal Decisions

Site visit made on 11 May 2022

**by Michael Boniface MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 May 2022**

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### **APPEAL A**

**Appeal Ref: APP/X5990/W/21/3287926**

**90 Gloucester Terrace, London, W2 6HP**

- 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 Mr Benjamin Gareh, Instar Properties Ltd against City of Westminster Council.
  - The application Ref 21/02746/FULL, is dated 26 April 2021.
  - The development proposed is to create a single dwelling house over three floors.
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### **APPEAL B**

**Appeal Ref: APP/X5990/Y/21/3288100**

**90 Gloucester Terrace, London, W2 6HP**

- 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 Mr Benjamin Gareh, Instar Properties Ltd against City of Westminster Council.
  - The application Ref 21/02747/LBC is dated 26 April 2021.
  - The works proposed are to create a single dwelling house over three floors.
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### **Decision**

1. Appeal A is dismissed and planning permission for a single dwelling house over three floors is refused.
2. Appeal B is dismissed and listed building consent is refused for a single dwelling house over three floors.

### **Preliminary Matters**

3. As the proposal is in a conservation area and relates to a listed building 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).
4. No decision was made by the Council in this case but it has since confirmed that, had it been empowered to do so, it would have refused planning permission and listed building consent due to the heritage impact of the proposals on the listed building and conservation area. In addition, for Appeal A, concerns are raised regarding a lack of information on sustainable design principles including resource and energy use; the effect on biodiversity; the effect on the living conditions of neighbouring occupants within 90 Gloucester

Terrace; and insufficient information on the extent of pruning required to an adjacent Cherry tree.

## **Main Issues**

5. In light of the above, the main issues are whether the proposal would preserve a Grade II listed building, 90-132 Gloucester Terrace, and any of the features of special architectural or historic interest that it possesses; and the extent to which it would preserve or enhance the character or appearance of the Bayswater Conservation Area.
6. In addition, for Appeal A, whether the development would incorporate appropriate sustainable design principles including resource and energy use; the effect on biodiversity; the effect on the living conditions of neighbouring occupants within 90 Gloucester Terrace, with particular regard to loss of light and sense of enclosure to flats at basement and ground floor level; and the effect on an adjacent Cherry tree.

## **Reasons**

### *Listed building*

7. The appeal property is part of a terrace of grand townhouses standing on the corner of Gloucester Terrace and Chilworth Street. The terrace stands amongst similarly scaled and laid out residential terraces with fine architectural detailing and a strong consistency with its neighbours. The residential blocks provide a strong sense of enclosure to the wide tree lined streets and this is reinforced by the tall screen wall enclosing the yard within the appeal site that connects the terrace blocks between Gloucester Terrace and Chilworth Street.
8. The proposed dwelling would largely sit behind the existing screen wall, its curved barrel shape roof maximising the habitable space and reflecting the shape of the centrally positioned blind arch set within the wall. The modern design proposed, with its glazed roof lanterns, screens and terraces would be an appropriate approach within the yard, which is well contained by very tall walls on all sides. A modernist approach would distinguish the dwelling as a modern addition within a historic context. It would be an imaginative and efficient use of the currently unused yard that currently serves little purpose. The height of the existing wall is such that the mass of the building would be effectively screened from the public realm, and to a large extent from its neighbours.
9. However, the proposed interventions to the screen wall itself, part of the listed building, would be less successful in integrating the proposed property. There is no firm evidence before me as to whether the blind arch and window apertures in the wall were originally openings or designed simply to add interest to the screen wall. The similar screen wall on the opposite side of the road incorporates a carriage arch but this is not comparable to the scale of the blind arch within the appeal site and serves as access to a mews development. A similar blind arch can also be seen on the opposite wall, along with blind window apertures, bringing some consistency in design between the walls.
10. The screen wall in question, along with the one on the opposite side of the road, contribute to the strong sense of street enclosure, avoiding a break in the grand built facades. The proposal would involve a significant erosion of this solidity, opening up the area within the large arch and introducing glazing.

This would be a harmful intervention that would become a prominent modern addition to the street scene, both by day and night when the opening would likely be lit internally. It would become a stark contrast with the traditional materials, window proportions and design of the listed building and its neighbours that would be more akin to a retail shop front than a discreetly sited dwelling.

11. Proposals to incorporate a more traditionally scaled window and door within existing blind apertures in the lower parts of the wall would be less problematic, reflecting an opening on the opposing wall and not appearing unduly uncharacteristic. Similarly, proposals to alter the existing raised garden area, which has already been altered in the past to remove the railings, and installation of new front railings in keeping with neighbouring properties would not harm the listed building, subject to a suitable design being secured by condition.
12. Overall, however, I find that the proposal would fail to preserve the special interest of the listed building. The harm would be less than substantial in the terms of the National Planning Policy Framework (the Framework) but is nevertheless of considerable importance and weight.
13. I have had regard to the public benefits identified by the appellant, including the provision of a new dwelling, improvements to the streetscape through reinstatement of appropriate railings and additional passive surveillance onto Chilworth Street. The proposal would also make use of a currently unused yard but in the absence of the appeal proposal, the listed building would not be adversely affected. The public benefits that would arise from the proposal are not sufficient, even cumulatively, to outweigh the identified harm.
14. For these reasons, the proposal would be in conflict with the Act and contrary to policy contained within the Framework. In addition, there would be a conflict with Policies 38, 39 and 40 of the City Plan 2019-2040 (April 2021) (City Plan), which seek to conserve heritage assets.

#### *Conservation area*

15. The Bayswater Conservation Area incorporates large areas of grand townhouses on wide tree lined streets. The collective arrangement of these buildings, their grand scale enclosing the streets and fine architecture create significant group value and a cohesive historic streetscape.
16. As I have set out above, the development would considerably diminish the sense of street enclosure by introducing a large area of uncharacteristic glazing, punctuating the solidity of the screen wall. Furthermore, its distinctly modern appearance would be at odds with the architectural detail and window proportions of surrounding properties.
17. Whilst the appeal site is a small component of the conservation area, the effect of the development would be clearly apparent as a detracting and prominent feature that would harm its significance. Again, the harm would be less than substantial, but the public benefits arising would not outweigh this harm.
18. Given the above, the proposal would fail to preserve the character or appearance of the Bayswater Conservation Area in conflict with the requirements of the Act and contrary to policy contained within the Framework.

In addition, there would be a conflict with Policies 38, 39 and 40 of the City Plan, which seek to conserve heritage assets.

### *Sustainable design*

19. Policies 36 and 38 of the City Plan expect all development to reduce on-site energy demand and maximise the use of low carbon energy sources; to be designed in accordance with the Mayor of London's heating hierarchy and to incorporate principles of sustainable design. Little information has been submitted to demonstrate compliance with these policies, but the Council has not raised any specific concern that the development would be unable to meet requirements. The proposal would be a new building using modern construction techniques and further detail regarding sustainable design and energy proposals could be secured by condition if planning permission were to be granted. As such, I find no conflict with the Policies 36 and 38 of the City Plan.

### *Biodiversity*

20. Policies 7 and 34 of the City Plan anticipate that, amongst other things, development will, wherever possible, contribute to the greening of Westminster and achieve a biodiversity net gain wherever feasible and appropriate. Again, little information is provided to support these objectives. However, the requirements of the policies are not absolute and it must be recognised that different sites will have varying capacity for contributing towards such aims.
21. In this case, the site is extremely restricted by the existing high walls surrounding. The yard area is currently entirely hard surfaced, albeit that weeds are growing amongst the cracks, and so the contribution it makes to the area in terms of planting and biodiversity is likely to be very small indeed. The appeal proposal would incorporate an area of green roof and a small planter to the rear first floor terrace. These areas provide some opportunity to make a contribution in line with the policies and further detail could be secured by condition if planning permission were to be granted. There would be no conflict with Policies 7 and 34 of the City Plan.

### *Neighbours living conditions*

22. The proposed dwelling would be located very close to its neighbours, in particular flats within 90 Gloucester Terrace. The application is accompanied by a Daylight and Sunlight Report which assesses the potential effects of the development on adjacent windows. The most significant impacts would be upon a set of French doors serving a bedroom within the basement level flat and a bedroom window within the ground level flat, both of which face onto a lightwell perpendicular to the appeal property.
23. The effect on daylight received would be noticeable but the BRE Guidelines<sup>1</sup>, against which the effects are assessed, should be interpreted flexibly bearing in mind the site context. The appeal site is located in a busy urban context where buildings are densely developed and levels of light reaching individual rooms will not always meet the guideline values. In this case, two bedrooms would be affected and whilst this is undesirable, the remainder of the flats, including the principal habitable rooms, would remain largely unaffected. The effect on other neighbouring properties in terms of light would be lesser still. Overall,

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<sup>1</sup> BRE Guidance: Site Layout Planning for Daylight and Sunlight (2011)

the effect of the development on levels of light would not unacceptably harm neighbours living conditions.

24. The outlook from the same windows would be altered by the development, which would become visible beyond the lightwell. Again, it is not uncommon in a busy urban context for windows to look out into enclosed lightwells, as would be the case here. Whilst there would be an appreciable sense of enclosure created, the outlook from the existing bedrooms would remain acceptable. A small secondary window serving a kitchen/living area would directly oppose the proposed building, but more open views would remain possible from the primary window serving this room and so living conditions would not be unduly harmed.
25. The building has been designed to avoid overlooking and a loss of privacy and the Council raises no concerns in these regards, subject to a window facing onto the lightwell being obscure glazed and fixed shut, which could be secured by condition. There would be no unacceptable overlooking or harm to privacy.
26. Overall, the development would not unacceptably harm the living conditions of neighbouring occupants and I find no conflict with Policy 7 of the City Plan, in so far as it seeks to protect amenity.

#### *Adjacent tree*

27. An arboriculture report provides an assessment of the likely impact on trees. It finds that an established Cherry tree on the site boundary to the rear of 92 Gloucester Terrace is unlikely to have roots within the appeal site, considering the large intervening wall and hard surface within the appeal site. However, the tree does significantly overhang the appeal site at present and it is likely that some works would be necessary to accommodate the development, albeit that the first floor would step away from the boundary to allow some clearance.
28. Some pruning of the tree is unlikely to significantly harm the amenity it offers given its location within a private rear garden, largely screened from public view by the existing built environment. Further detail of proposed tree works could be secured by condition if planning permission were granted and subsequent works to the tree would remain within the control of the Council, given its location within the conservation area. I find no conflict with Policies 34, 38 and 39 of the City Plan.

#### **Conclusion**

29. I have carefully considered the issues raised by the Council in relation to whether the development would incorporate appropriate sustainable design principles including resource and energy use; the effect on biodiversity; the effect on the living conditions of neighbouring occupants within 90 Gloucester Terrace; and the effect on an adjacent Cherry tree but have found no conflict with the development plan in these regards.
30. However, the proposal would fail to preserve the special historic interest of the Grade II listed building and the character or appearance of the Bayswater Conservation Area. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with policies 38, 39 and 40 of the City Plan. As a result, the proposal would not be in accordance with the development plan.

31. In light of the above, the appeals are dismissed.

*Michael Boniface*

INSPECTOR