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PINS Refs: APP/X5210/W/15/3065814 & APP/X5210/Y/15/3065818  
Our Ref: 2014/3316/P & 2014/6518/L  
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Kerr Brown  
The Planning Inspectorate  
3/05a Wing  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Dear Kerr Brown,

**Appeal by AMBA HOLDINGS LTD Mr Sanchit Patel  
Site at 61 Swinton Street, London, WC1X 9NT**

**Application proposal:**

Full planning permission - Conversion of public house with ancillary accommodation to bistro at ground and basement floor levels, 2 x self-contained flats at ground and first floor levels and 10 room hotel and erection of a three storey rear extension and light well to front.

Listed building consent - for internal and external alterations associated with the above.

The Council's case is briefly set out in the officer's delegated report dated 20<sup>th</sup> March 2015 which details the proposal, site and surroundings, the site history, consultation responses and an assessment of the proposal. A copy of the report was sent with the questionnaire.

In addition to the information sent with the questionnaire I would be pleased if the Inspector would take into account the following information and comments before deciding the appeals.

**1. Summary of the site, application and reasons for refusal**

This is an important site. It comprises a grade II listed building within the Bloomsbury Conservation Area. It forms part of a listed terrace on the south side of the street, Nos.55-67 (odd), which have iron railings to the front of adjoining buildings.

1.1 It is a four storey property with a basement located on the south side of Swinton Street close to the junction with Grays Inn Road. The building

is currently vacant. It was most recently in use as a public house, with an ancillary residential use on the second and third floors.

1.2 Planning permission and listed building consent are sought for the conversion of public house (Class A4) to a 10 room hotel use with a bistro (Class A3) on the ground floor and an open court yard. Two new self-contained flats would be formed on the ground and first floor levels (Class C3) and erection of a three storey rear extension and light well to front. The bistro would be accessed from the main entrance on the ground floor and the hotel would be accessed through the lobby in the bistro. The self-contained flats would be accessed through the new door on the left hand side on the front of the building. The development comprises the following:

- Three storey rear extension would measure 3.7m deep, 10.6m wide and the same height and pitched roof to match the existing building. The new extension would be constructed with reclaimed brickwork to match the existing and new double glazed sash windows. The existing rear-wing would also be refenestrated with small-paned timber sash windows.
- To the front of the property, all existing sash windows would be overhauled and renovated with 'slimline' double glazing and the two blocked windows on the third floor will be re-opened, external doors would be refurbished and modern doors would be replaced with traditional timber panelled doors. A lightwell would be provided and enclosed by new iron railings.
- Basement: New staircase to access basement and internal floor level lowered with new concrete slab and insulation. The basement would be reopened and enclosed by metal railings. The basement would comprise a kitchen for the bistro, lobby and plant room.
- Ground floor: New entrance accessed from Swinton Street with a lobby area leading to bistro/breakfast room. A separate entrance proposed for the two bedroom flat with a courtyard.
- First floor: One bedroom flat and two en-suite guest rooms for the hotel.
- Second floor: Four en-suite guest rooms proposed.
- Third floor: Four en-suite guest rooms proposed.
- Internal alterations include: subdivision of the first floor, reconfiguration of the first flight of stairs including structural work to the spine wall and loss of bar features, remove the original rear wall to extend the depth of the building, and increase the height of the ceiling at third floor level.

1.3 **The applications were refused on 20<sup>th</sup> March 2015 for the following reasons:**

#### Summary of planning application refusal reasons:

1. The proposed extension, by virtue of its full height, full width, scale, bulk and design would result in an over-dominant form of development, and harm the special historic and architectural interest of the listed building and the character and appearance of Bloomsbury Conservation Area.
2. The proposed development, in the absence of a sustainability report, would fail to ensure property standards of sustainability in the development.
3. The proposed two bedroom flat, by reason of its poor layout and it being single aspect with windows only looking out on to the internal courtyard, would result in poor levels of sunlight and daylight and unacceptable residential standards for future occupiers.
4. The proposed development would harmfully compromise and undermine the services and facilities that the existing public house provides in supporting the needs of the local community and its ability to contribute to Camden's cultural heritage.
5. The proposed development, in the absence of a legal agreement to secure car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area.
6. The proposed development, in the absence of a legal agreement to secure a Construction Management Plan, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area.

#### Summary of listed building consent application refusal reasons:

1. The design of the proposed extension in terms of its full height and full width would disfigure the original layout and historic envelope of the building detrimentally overwhelming the existing and original form and scale of the listed building as well as resulting in the loss of the historic plan form harmful to the special interest of the listed building and setting of the conservation area.
2. The proposed double glazed windows by virtue of their appearance would be harmful to the special interest of the listed building and conservation area and to the setting of the wider listed terrace group.
3. The creation of a lightwell to the front façade would result in the loss of historic York Stone paving and would be atypical of traditional public houses and as such would be harmful to the special interest of the listed building/group and fail to preserve the character and appearance of the Bloomsbury Conservation Area.
4. The proposal, by reason of its loss of the rear wall, the internal plan form layout and failure to demonstrate how the structure is to be dealt

with, would disfigure the historic envelope of the building and would be harmful to the special interest of the listed building/group and fail to preserve the character and appearance of the Bloomsbury Conservation Area.

## 2.0 **2013/4793/P – Withdrawal of refusal reason 4 of planning permission regarding loss of public house**

The council seeks to protect public houses in various circumstances. The council however withdraws reason for refusal 4 on the basis of the recent and subsequent appeal decision regarding the Sir Richard Steel PH (APP/X5210/W/15/3003396 dated 22/07/2015)

The inspector in dismissing the appeal for works impacting detrimentally on the PH, was mindful of the current value of the facility to the local community. The appellants however state that the existing public house has been empty for 18 months and furthermore no objections have been received to its loss. Given this appeal decision, it is not considered that protection of the public house can be justified in the circumstances.

## **3. Development Plan Policies**

### *Local Development Framework*

3.1 The Statutory Development Plan is the Council's Local Development Framework (LDF), which was formally adopted on 8th November 2010. The primary documents within the LDF relevant to this appeal are the Camden Core Strategy 2010-2025 and Camden Development Policies documents, both formally adopted on 8th November 2010 after due public consultation and examination. The Inspector is therefore invited to give substantial weight to the LDF policies and supporting text.

3.2 The relevant LDF policies to this appeal are as follows:

#### Core strategies

- CS1 (Distribution of growth),
- CS5 (Managing the impact of growth and development),
- CS8 (promoting a successful and inclusive economy)
- CS9 (achieving a successful Central London)
- CS10 (Supporting community facilities and services)
- CS11 (Sustainability)
- CS14 (Promoting high quality places and conserving our heritage)
- CS19 (delivering and monitoring the Core Strategy)

#### Development policies

- DP1 (Mixed Use Development)
- DP2 (making full use of Camden's capacity for housing)
- DP13 (employment premises and sites)
- DP14 (Tourism development and visitor accommodation)

DP 15 (Community and Leisure uses)  
DP16 (transport implications of development)  
DP17 (walking, cycling and public transport)  
DP18 (parking standards and limiting the availability of car parking)  
DP19 (managing the impact of parking)  
DP20 (movement of goods and materials)  
DP21 (development connecting to the highway network)  
DP22 (Promoting sustainable design and construction)  
DP24 (Securing high quality design)  
DP25 (Conserving Camden's heritage)  
DP26 (Managing the impact of development on occupiers and neighbours)  
DP 29 (Improving access)

Camden Planning Guidance 2011  
Bloomsbury Conservation Area Appraisal and Management Strategy  
2011

#### **4. The Appellant's Grounds of Appeal**

The appellant has appealed the refusal on the following grounds, summarised below:

- i) Design Matters (RR1 of planning and listed building refusal)*
- ii) Double glazed windows (RR 2 of Listed Building application)*
- iii) Lightwell (RR 3 of Listed Building application)*
- iv) Historic envelope of building (RR 4 of Listed Building application)*
- v) Sustainability Statement (RR 2 of full planning application)*
- vi) Daylight report (RR 3 of full planning application)*
- vii) Pub use (RR 4 of full planning application)*
- viii) Pre-application advice*

#### **5 Response to the Appellants Statement**

##### **Design and Conservation issues**

The substantive reasons for refusing the appeal applicants are set out in the officers' delegated report and as such these are not repeated here. The section below however seeks to amplify the Councils position regarding design and conservation. The following issues will be discussed in more detail below:

- A. Policy Context
- B. Significance of the grade II listed building;
- C. Proposed extension (reason for refusal 1 planning and listed building consent);
- D. Double glazing (reason for refusal 2 listed building consent);

- E. Front lightwell (reason for refusal 3 of the listed building consent);
- F. Historic interior and envelope (reason 4 of the listed building consent).

#### A. Policy context

##### ***Planning Act***

In considering a proposal for listed building consent, the duty imposed by section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. A comparable duty with regard to planning permission is imposed by section 66 of the Act. Section 72 of the Act requires that special attention must be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

##### ***Judgements.***

A series of recent judgments have drawn attention to the statutory duties under section 66(1) and 72(1) and how they should be dealt with by the decision maker. The judgements are chronologically, Barmwell Manor<sup>i</sup>, Forge Field<sup>ii</sup> and Mordue<sup>iii</sup>

The essential point of all three cases concerns the weight that must be given to any identified harm, to the setting of a listed building or the character or appearance of a conservation area; in short, if any harm of that sort is identified it must be given considerable importance and weight.

##### ***The National Planning Policy Framework 2012***

National policy guidance set out in the National Planning Policy Framework ('the Framework') confirms the great weight in favour of the conservation of 'heritage assets' such as listed buildings and conservation areas. The particular significance of any element of the historic environment likely to be affected by a proposal should be identified and assessed. Any harm should require clear and convincing justification.

The London Borough of Camden consider that the scheme will not result in 'substantial' harm to the heritage asset.

It is considered that the development would result in 'less than substantial' harm being caused to the setting of the terrace of listed building due to the insertion of double glazed windows to the front elevation and less than substantial harm would be caused to the character and appearance of the conservation area through from the works.

##### ***Camden LDF and Development Plan***

The relevant Camden LDF Core Strategy policy is CS14(b) 'Promoting high quality places and conserving our heritage' -which requires that the council will ensure that Camden's places and buildings are attractive, safe and easy to use by "preserving and enhancing Camden's rich and diverse heritage assets and their settings, including conservation areas."

The relevant Development Plan policies include DP24. Policy DP24 requires all developments to be of the highest standard of design and will expect developments to consider (amongst other matters):

a) Character, setting, context and the form and scale of neighbouring buildings; b) The character and proportions of the existing building, where alterations and extensions are proposed and; d) the provision of visually interesting frontages at street level;

Policy DP25 'Conserving Camden's heritage' which provides more detailed guidance on the Council's approach to protecting and enriching the range of features that make up our built heritage is also relevant. This seeks to maintain the character of Camden's conservation areas by b) Only permit development within conservation areas that preserves and enhances the character and appearance of the area and; f) only grant consent for a change of use or alterations and extensions to a listed building where it considers this would not cause harm to the special interest of the building; and g) not permit development that it considers would cause harm to the setting of a listed building.

For the reasons set out in the *Response to the Appellants Statement* below the scheme fails to preserve or enhance the character of the area and would harm the setting of the adjoining listed buildings.

### ***Camden Guidance on design (CPG1)***

Camden has adopted guidance on rear extension which is relevant in this instance. The guidance at paragraph 4.8 is clear that. "Extensions should be subordinate to the original building in terms of scale and situation unless the specific circumstances of the site, such as the context of the property or its particular design, would enable an exception to this approach." In this instance the extension is not subordinate and there is not considered the design is not considered to be an exception. Whilst the existing rear façade has been altered the solution to improving its appearance does not require the scale of intervention proposed and could be achieved by simply reinstating windows. It should be made clear that the Council have no objection to replacing the existing rear extension with a new addition of similar size but cannot support the scale of extension proposed.

Paragraph 4.10 of the guidance goes on to say that rear extension should be designed to (inter alia):

- be secondary to the building being extended, in terms of location, form, scale, proportions, dimensions and detailing;

*LPA response: The proposed scheme is not secondary in form, scale, proportions or dimensions.*

- respect and preserve the original design and proportions of the building, including its architectural period and style;

*LPA response: The extension fails to respect the original plan form, M shaped roof form which is a key characteristic of its architectural period and style and*

one of the reasons for it being listed as a building of considerable architectural and historic interest.

- respect and preserve the historic pattern and established townscape of the surrounding area, including the ratio of built to unbuilt space.

*LPA response: The extension fails to respect or preserve the historic pattern of development or townscape of the area. The building is design as a two room plan. It just so happens that in this instance the rooms are located either side of a central staircase providing a single room deep building. This is consistent with all of the other listed buildings along the street and with London Georgian townhouse architecture more generally. Presumably the rooms are located side by side rather than back to back to afford the frontage more grandeur possibly due to its intention to be used as a public house. The heritage statement confirms that “the building was already in use as a tavern or public house called The King’s Head as early as the 1780s.”*

It should be noted that the duties imposed by section 66 and 72 of the Act are in addition to the duty imposed by section 38(6) of the Planning and Compulsory Purchase Act 2004, to determine the application in accordance with the development plan unless material considerations indicate otherwise.

#### *Height of rear extensions*

Paragraphs 4.12-4.13 specifically refer to height they state

4.13 In order for new extensions to be subordinate to the original building, their heights should respect the existing pattern of rear extensions, where they exist. Ground floor extensions are generally considered preferable to those at higher levels. The maximum acceptable height of an extension should be determined in relation to the points outlined in paragraph 4.10 above. In cases where a higher extension is appropriate, a smaller footprint will generally be preferable to compensate for any increase in visual mass and bulk, overshadowing and overlooking that would be caused by the additional height.

4.13 In most cases, extensions that are higher than one full storey below roof eaves/parapet level, or that rise above the general height of neighbouring projections and nearby extensions, will be strongly discouraged. (our emphasis)

#### **B. Significance**

Prior to identifying any harm it is firstly important to determine the significance of the subject building. Mid Georgian London terraced buildings of this type comprise certain aspects common to all which make up their special interest. The degree to which these survive is an indication of their significance. These include (in no particular order); The architectural composition of the terrace facades; The detailed architectural treatment of the elevations including proportions; character, craftsmanship and roof form; The plan form of the interior – generally 2 rooms (side to side in this instance) per floor with the principal rooms located at Piano Noble level; staircase compartment rising vertically through the building usually afforded light from staircase landing



windows; The detailed architectural treatment of the of the interiors including mouldings and decorative features which relate to the hierarchy and architectural vocabulary throughout the house; Structural integrity and fabric – timber frame supported on load bearing masonry brick walls with load bearing central timber partition to support the roof (and joists if necessary dependent on size of house and direction of the joists) and lath and plaster walls and ceilings. Additional comment on Georgian Terrace houses and their significance can be found in English Heritage guidance appended to the letter.

The subject building is in a state of disrepair however it retains a large majority of the characteristics outlined above except at ground floor level and rear façade where the commercial use and later alterations/extensions have resulted in some impact to its historic integrity common with its use and not considered fundamentally irreversible changes which unduly affect its value. The building is considered to be a good example of Georgian architecture and has an added historical interest with regard its long term use as a public house which is manifested externally through the paving allowing public access rather than a more domestic arrangement of lightwells and railings .both externally with regard the front façade and in particular in its contribution to the terrace of which it forms

Externally the front façade has significant value as well as plays an important contribution to the terrace of which it forms part. The historic M shape roof appears to exist which is of particularly valuable features of buildings of this period. Internally the building largely retains its internal plan form, layout and historic features and fabric. Despite the large existing 20<sup>th</sup> century rear extension, the form and scale of the original building can be easily discernible from the rear of the property. The historic plan survives to the upper floors with a recognisable central core containing the entrance hall and a full-height dog-leg stair, with a central landing and a single room either side of the staircase, heated from chimney stacks in the end walls.

The upper floors including, but not limited to:

- Historic structure including walls and floor joists;
- Staircase
- Historic floorboards
- Chimney breasts
- Numerous historic windows and reveals/shutters
- Door and architraves

The grade II listed building is rightly a building of significant architectural and historic interest of national importance and its contribution as a heritage asset and as part of the wider conservation area should not be in dispute.

**C. Proposed extension (reason for refusal 1 planning and listed building consent)**

Notwithstanding the issues regarding the plan for appreciation of the historic layout and scale of the listed building the proposed extension is considered to be over scaled and would over dominate the building. The extension would be full width and full height. The appreciation of the historic envelope/rear

building line, parapet and roofline would be concealed externally. The extension would replicate the profile of the existing roof. This would fundamentally alter the original M shape roof and result in a profile which is atypical, non historic and fails to allow the original and new elements of the building to be distinguished.

The extension would be contrary to guidance set out in Camden's CPG and DP policy DP24 which specifically requires extensions to be subordinate or secondary in form, scale, proportions or dimensions to the host building. The improvements to the rear fenestration pattern provided by traditional hierarchy of windows to the new extension do not outweigh the fundamental impacts of the scale and failure to appreciate and recognise the original listed building.

#### **D Double glazing (reason for refusal 2 listed building consent)**

Externally the essence of a Georgian terrace of this type rests in the repetitive treatment of the basic constituent unit. When an alteration departs from the consistent treatment enough to disrupt the basic repetitive pattern, the quality of the whole terrace can be harmed.

Whilst double glazed windows are to be widely found in the conservation area, and in buildings on Swinton Street, their contribution to character and appearance is not always positive.

The special interest of the listed building would not be preserved by the proposal, nor would the setting of the adjoining listed buildings and the significance of the terrace as a whole.

As far as traditionally configured modern double glazed units go, these 'Slimlite' fixtures offer amongst the closest approximations to traditionally fabricated historic window types available. Their principal distinguishing advantage being the employment of the functional glazing bars, a considerable improvement on those with sandwiched dividers within the unit and with profiled strips applied to their inner and outer faces. However, despite this achievement, it is the appearance of the double glazed units, with their visible parting bead and the double register of the two planes of glass in each one that identify them as modern fixtures, critically undermining the integrity, character, and so special architectural interest and significance of the listed terrace (the heritage asset).

Such an outcome would fail to preserve the special architectural interest of the building, the desirability of which is fully anticipated by the Act, and one contrary to the expectations of paragraph 132 of the Framework, which asserts that great weight should be given to the heritage asset's conservation.

It would also be contrary to local development plan policy, both being in conformity with, and underpinning, these statutory and policy objectives. The drawings in appendix D do not prove the existing windows can be retained and double glazed units can be installed. These need to be checked and measured on site.

It is acknowledged that the property at no. 65 was granted permission however this should not take precedent. At the time the building was on the At Risk register and it is understood that leniency was given to ensure the building could be refurbished and saved from severe degradation. No. 61 is NOT on the at risk register and does not require special dispensation.

Extract of the At Risk Register List is below:

<http://risk.historicengland.org.uk/register.aspx?id=49124&rt=0&pn=4&st=a&dj=Camden&ctype=all&crit=>

*65, Swinton Street WC1 - Camden*

*Terraced house circa 1775, with late C19 shop front. Currently unoccupied and deteriorating. The building is in very poor condition, with much of the interior removed. Consents were granted in 2012 for conversion to a hotel, but the scheme has not yet been implemented.* © English Heritage

**Heritage Category: Listed Building grade II**

Name: 65, Swinton Street

Street No: 65

Street: Swinton Street

District/London Borough: Camden

County: Greater London

Parliamentary Constituency: Holborn and St. Pancras

Region: London

Postcode: WC1

Designation: Listed Building grade II, CA

List Entry Number: 1378960

Condition: Very bad

Occupancy/Use: Vacant/not in use

Priority Category: B - Immediate risk of further rapid deterioration or loss of fabric; solution agreed but not yet implemented

Previous Priority Category: B - Immediate risk of further rapid deterioration or loss of fabric; solution agreed but not yet implemented

New Entry: No

Owner Type: Private

Contact: Caroline Welch (LPA) 020 7974 1944

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### **E Front lightwell (reason for refusal 3 of the listed building consent)**

Part of the building's interest both architecturally and historically lie with its use as a public house for the large majority of its life. This distinguishes the building from its domestic neighbours and could explain why the building has a two room wide rather than deep plan form. This uniqueness and difference in form, possibly created by its function, should be celebrated as part of the building and areas rich history and not disregarded.

The ability to appreciate and recognise the function of the building as a public house largely resides with the ground floor entrance. The inclusion of the beer drop and york stone paving to along the entrance reinforce the historic function of the site. The creation of a lightwell to the front façade would result in the loss of historic York stone paving and beer drop and would be an atypical of a traditional public house and as such would harm

the special interest to the listed building/group and fail to preserve the character and appearance of the Bloomsbury Conservation Area. It is considered important to retain the frontage without lightwells to appreciate and recognise the historic value of the use.

**F Historic interior and envelope** (reason 4 of the listed building consent)

The erection of the full height full width rear extension would disfigure the original layout and historic envelope of the building. As set out above this would overwhelm the existing and original form and scale of the listed building as well as result in the loss of this historic two room plan form.

The staircase would have to be fundamentally altered and given its delicate state would more than likely have to be replaced. The staircase, along with the roof, are fundamental characteristic features which play important roles in the understanding of buildings of this age. Both of these features would be severely compromised by the proposed scheme.

The original roof profile would be disfigured and the two room plan form would be lost. These changes fundamentally alter the historic character of the Georgian property.

In addition the reconfiguring the landing would also result in the anti-room at the head of the stairs being lost and the original door opening removed and relocated.

Raising the ceiling at the upper floor would impact on the hierarchy of the building.

The creation of bathroom within the main rooms at upper level would harm the original form and proportions of the space, this is particularly detrimental to the first floor.

### **Assessment of harm**

Great weight and importance has been given to the harm caused by the excessive rear addition, creation of the lightwell, the double glazed windows to the front elevation and the impact on the plan form and historic and feature in the interior. Any harm should result in the appeal being dismissed. Even if the inspectors agrees with some only some of the harm caused this should still be given considerable weight and importance and lead to a dismissal of the appeal.

Notwithstanding this substantial harm is considered to be caused to the listed building due to the impact the proposal would have on the buildings special architectural as well as historic interest including the roof form, internal plan form, appreciation of the front façade and removal of the historic paving and

The insertion of double glazed units to the front would harm the setting of the terrace and result in less than substantial harm to the listed group.

### **Public benefit**

Any investment that would help to secure the future of a listed building has an element of public benefit. The additional floorspace to be created by the proposal could make the house more marketable in the longer term and the fenestration pattern of the new rear extension would improve the appearance of the rear façade when viewed from the limited private vantage points. However, there are insufficient grounds to suggest that the building would not be viable as a family dwelling without the proposed extension and other changes.

The public benefit of the proposal would be marginal compared with scheme which offered a similar refurbishment without the harmful elements and would not outweigh the harm caused by the alteration.

For the reasons set out above, and having taken account of all representations made, it is concluded that both appeals should be dismissed.<sup>1</sup>

### **Sustainability issues**

*The appellant states that they interpreted the council's policies to mean that a sustainability report was not required.*

The Council argues however that proposed alterations and extensions would result in a total floorspace of more than 500sqm. Policy CS13 (Tackling climate change through promoting higher environmental standards) clearly requires submission of a statement in these circumstances. The applicant has failed to submit an energy statement in compliance with CPG3 (Sustainability) to demonstrate how the proposed development would reduce carbon dioxide emissions. The proposal is unacceptable on these grounds.

### **Daylight / sunlight and sense of enclosure issues**

New information has been submitted by the appellant regarding daylight. The appellant has submitted an assessment at appeal stage undertaken by NRG which demonstrates that the self-contained flats and hotel guest rooms at 61 Swinton Street achieve good levels of daylight with all rooms meeting or exceeding the values set by British Standard BS8206:Pt2 and Site Layout Planning for Daylight and Sunlight, A guide to good practice, by P J Littlefair, BRE 2011.

The assessment is based on the introduction at appeal stage of rooflights to improve the lighting levels in unit one (as shown in appendix C of the appellant's submission). These amendments are material alteration to this listed building and have not been consulted upon. The roof lights maybe acceptable in listed building terms, subject to submission of details. However the inspector may not accept these alterations without the benefit of consultation.

The new rooflights, introduced as part of this appeal, are positioned within the flat roof above residential unit one, to address the loss of daylight and sunlight concerns raised. The Daylight report submitted with the appeal shows the proposal would now meet BRE standards and not result in poor light to the proposed two bedroom flat. The Council is however not convinced that the amenity to the flat is acceptable. Moreover, it does not address concerns over the sense of enclosure to the single aspect flats, which would only look out solely to the rear courtyard. As such, it is considered the proposed scheme would still result in poor residential standards for future occupiers.

### **Loss of Pulic House issue**

The appellant states that the applicant has owned the building for over 5 years and has seen three operators come to try and make the pub space work. The final 2 on minimal rental terms because it was cheaper than paying empty rates if a business was operating on site.

As stated above, this reason for refusal is now withdrawn. The loss of public houses have become a growing concern for the Council. Recently two appeals have been dismissed at Golden Lion Public House (APP/X5210/A/14/2218740 dated 2<sup>nd</sup> October) and Sir Richard Steel PH 97 Haverstock Hill (APP/X5210/W/15/3003396 dated 22/07/2015).

### **Pre-application submission issues**

The appellant raises concern about the pre application process. A pre-application response was sent to the applicant on 3<sup>rd</sup> October 2014. This sets out the strong objections raised at pre-application stage. Minor revisions would not have met the concerns raised. Any substantial revisions received after this pre-application response, would have required separate formal pre-application procedures. There is no record of additional formal submissions.

### **Section 106 issues**

With regard to the reasons for refusal regarding Car Free development and Construction Management Plan, the appellant has agreed to enter into a S106 legal agreement should the appeal be allowed. A S106 therefore is recommended should the inspector be minded to allow the appeal and this is set out in appendix 1

## **6. Conditions and S106 requirements should the appeal be allowed**

Without prejudice to the Council's submissions and if the Inspector is minded to allow the appeal, it is requested that conditions attached to this letter as **Annex A** be imposed. The justification is set out beneath each condition.

In addition, a S106 agreement is required for car free development and a construction management plan. These are also justified in Annex A.

## **7. Conclusion**

On the basis of information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal.

If any further clarification of the appeal submissions are required please do not hesitate to contact Mandeep Chaggar on the above direct dial number or email address.

Yours sincerely

Mandeep Chaggar  
Planning Officer  
Culture and Environment Directorate

## **Annex A: Conditions and s106 requirements**

### **Draft Conditions**

Without prejudice we would recommend the following conditions be attached to the decision notices should the appeal be allowed.

1. All new external and internal works and finishes and works of making good to the retained fabric, shall match the existing adjacent work with regard to the methods used and to material, colour, texture and profile, unless shown otherwise on the drawings or other documentation hereby approved or required by any condition(s) attached to this consent.

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 of the London Borough of Camden Local Development Framework Development Policies

2. Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the Council before the relevant part of the work is begun:

- a) Typical details of new railings at a scale of 1:10 with finials at 1:1, including materials, finish and method of fixing into the plinth .
- b) Plan, elevation and section drawings of all new doors at a scale of 1:10 with typical moulding and architrave details at a scale of 1:1.
- c) Plan, elevation and section drawings, including jambs, head and cill, of all new window including any roof lights at a scale of 1:10 with typical glazing bar details at 1:1.
- e) Samples and/or manufacturer's details of new facing material. The panel must include facing brickwork demonstrating the proposed colour, texture, face-bond and pointing.
- f) Details of any works of alteration or upgrading not included on the approved drawings which are required to satisfy Building Regulations or Fire Certification
- g) Plan, elevation and section drawings of the new staircase at a scale of 1:10 including details of the handrail, treads, newel and balustrade at a scale of 1:10

The relevant part of the works shall then be carried in accordance with the approved details

Reason: In order to safeguard the special architectural and historic interest of the building in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 of the London Borough of Camden Local Development Framework Development Policies.

3. Prior to the occupation of the residential (Class C3) units, details of secure and covered cycle storage area for 4 cycles shall be submitted to and approved by the local planning authority in writing. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and thereafter permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

4. Prior to the occupation of the residential (Class C3) units, details of the internal sound insulation shall be provided for the building in accordance with a scheme to be first approved by the local planning authority in writing. The use shall thereafter not be carried out other than in accordance with the approved scheme.



Reason: To safeguard the amenities of the upper residential floors and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

## **S106**

A legal agreement is required to mitigate potential impact on the highway in terms of a Car Free Development and a Construction Management Plan. The appellants will be approached regarding their agreement to this and progress will be reported at Final Comments stage. The reasoning for these requirements are set out below.

1 A car free agreement is required to minimise the impact on the surrounding highways network and amenity

### *Justification:*

The Section 106 Agreement restricts the development as car-free (unless the occupant is disabled) which prevents occupants of the development from being granted parking permits and contracts for Council owned or controlled car-parks. This obligation is worded to comply with S106 of the Town and Country Planning Act.

The reasons for this are to facilitate sustainability and to help promote alternative, more sustainable methods of transport. The site is located on Swinton Street, which provides excellent access to both Kings Cross and St Pancras Railway and Underground Stations the location has an excellent PTAL 6b rating (highest rating achievable). There is no vehicle access to the site. The site fronts the Transport for London Road Network (TLRN) of Swinton Street (which is one-way westbound at this point). It should be noted that traffic congestion is a significant problem on Swinton Street, particularly during the morning and afternoon/evening peak periods. In addition, the site is located within the Kings Cross Area controlled parking zone (CA-D) which operates on Monday to Friday between 0930 and 1830 hours and on Saturday between 0830 and 1330 hours. Council's records indicate that parking stress is a significant issue within the Kings Cross Area controlled parking zone, with a ratio of parking permits to parking spaces of 1.05 (i.e. 105 parking permits issues against every 100 parking spaces available).

As the scheme provides additional residential units a S106 for car-free development is required to ensure that that the development does not create additional parking stress and congestion. This is in accordance with policies CS11 (Promoting sustainable and sufficient travel); CS19 (Delivering and monitoring the Core Strategy); DP18 (Parking standards and availability of car parking); and DP19 (Managing the impact of parking); and CPG 7 (Transport).

A planning obligation is considered the most appropriate mechanism for securing the development as car free as it relates to controls that are outside of the development site and the level of control is considered to go beyond the remit of a planning condition. Furthermore, the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”. The Council’s Control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council’s control is derived from Traffic Management Orders (“TMO”), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car-free. Even if it could, such a mechanism would lead to a series of disputes between the council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a “Car Free” Section 106 Obligation. The TMO sets out that it is the Council’s policy not to give parking permits to people who live in premises designated as “Car Free”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”. Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

#### CIL Compliance:

The Car Free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport

## 2 Construction management plan to minimise the impact on the surrounding highway network

### *Justification*

The site is located on Swinton Street, which provides excellent access to both Kings Cross and St Pancras Railway and Underground Stations the location has an excellent PTAL 6b rating. There is no vehicle access to the site. The site fronts the Transport for London Road Network (TLRN) of Swinton Street (which is one-way westbound at this point).

The construction activities are likely to have a significant impact on the efficient and safe operation of the public highway in the vicinity of the site. It should be noted that traffic congestion is a significant problem on Swinton

Street, particularly during the morning and afternoon/evening peak periods. It will therefore need to be planned how the construction of the development will be managed in order to minimise any impact on the busy Swinton Street. In cases such as this where the construction impact is particularly significant Camden will seek to ensure that impact is properly managed by the developer through compliance with a Construction Management Plan ("CMP"). A CMP would allow the Council to work with the developer to ensure that the development would not have a significant impact on traffic congestion and/or road safety in the vicinity of the site. In addition, in instances where any intensification of servicing is likely to cause a significant impact to amenities in the area and to the maintenance of the satisfactory and safe operation of the public highway around the development site Camden will seek to secure a CMP. This is in accordance with policies CS5, CS11, CS19, DP20, and DP26 specifically paragraph 26.10, and CPG7 – Transport.

The appellant has not provided a Construction Management Plan in support of the application. It is noted that parking would not be provided on site for construction workers. However, the Council require further information to be submitted as there is concern that construction parking could create parking stress on roads in the vicinity of the site. A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP and SMP in this case simply because a considerable extent of the activity during construction and servicing could cause conflict with other road users or be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP to include traffic generation from removal and delivery of materials and deliveries to the site. This could result in traffic disruption and dangerous situations for cyclists, pedestrians and other road users.

Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and / or highway safety on the nearby roads hence, using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.

Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Circular 11/95, where it states at Appendix B as an example of an unacceptable condition, is one requiring loading and unloading and the parking of vehicles not to take place on the highway, as it purports to exercise control in respect of a public highway which is not under the control of the applicant.

CIL Compliance: The CMP requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed.

The Planning Inspector is respectfully requested to read the following extracts from Camden's Local Development Framework when assessing the need for the planning obligation requested:

- Core Strategy CS11 (Promoting sustainable and efficient travel); specifically the summary page (page 100) and paragraphs 11.23 to 11.25.
- Core Strategy CS19 (Delivering and monitoring the Core Strategy); specifically paragraphs 19.14 to 19.19.
- Development Policy DP20 (Movement of goods and materials); specifically paragraphs 20.10, 20.13, and 20.14.
- Development Policy DP21 (Development connecting to the highway network); specifically the summary page on page 96. This states that the Council will expect works affecting highways to:
  - address the needs of wheelchair users and other people with mobility difficulties, people with sight impairments, children, elderly people and other vulnerable users.
  - avoid causing harm to highway safety or hinder pedestrian movement and avoid unnecessary street clutter.
  - repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces following development.
- Development Policy DP21 (Development connecting to the highway network); specifically paragraphs 21.8 to 21.13 (Works affecting highways).
- Planning Guidance CPG6 (Amenity); specifically section 8 (Construction management plans).
- Planning Guidance CPG8 (Planning Obligations); specifically section 3 (Amenity).
- Planning Guidance CPG8 (Planning Obligations); specifically section 7 (Sustainability).
- Planning Guidance CPG8 (Planning Obligations); specifically section 5 (Community Safety); specifically paragraphs 5.25 to 5.29.

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<sup>i</sup> *The High Court (John Howell QC, sitting as a Deputy High Court Judge) delivered judgment today in Mordue v. Secretary of State for Communities and Local Government [2015] EWHC 539 (Admin).*

<sup>ii</sup> *The Forge Field Society & Ors, R (On the Application Of) v Sevenoaks District Council [2014] EWHC 1895 (Admin) (12 June 2014) [2014] EWHC 1895 (Admin)*

<sup>iii</sup> *Mordue v. Secretary of State for Communities and Local Government [2015] EWHC 539 (Admin).*