

---

## Appeal Decisions

Site visit made on 17 November 2015

**by John L Gray DipArch Registered Architect**

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

**Decision date: 30 November 2015**

---

### **Appeal Ref. APP/X5210/W/15/3065814**

#### **61 Swinton Street, London, WC1X 9NT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Sanchit Patel against the decision of the Council of the London Borough of Camden.
  - The application, ref. 2014/3316/P, dated 9 May 2014, was refused by notice dated 20 March 2015.
  - The development proposed is the conversion from a public house with ancillary accommodation to a bistro on the ground and basement floors, two self-contained flats on the ground and first floors and a 10-room hotel, together with alterations and extensions, including a three-storey rear extension and light wells at the front.
- 

### **Appeal Ref. APP/X5210/Y/15/3065818**

#### **61 Swinton Street, London, WC1X 9NT**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr Sanchit Patel against the decision of the Council of the London Borough of Camden.
  - The application, ref. 2014/6518/L, dated 9 May 2014, was refused by notice dated 20 March 2015.
  - The works proposed are the conversion from a public house with ancillary accommodation to a bistro on the ground and basement floors, two self-contained flats on the ground and first floors and a 10-room hotel, together with alterations and extensions, including a three-storey rear extension and light wells at the front.
- 

## **Decisions**

1. Appeal Ref. APP/X5210/W/15/3065814 is dismissed.
2. Appeal Ref. APP/X5210/Y/15/3065818 is allowed. Listed building consent is granted for alterations and extensions, including a three-storey rear extension and light wells at the front, at 61 Swinton Street, London, WC1X 9NT, in accordance with the terms of the application, ref. 2014/6518/L, dated 9 May 2014, subject to the conditions in the schedule attached to this decision.

## **Procedural matter**

3. Being on the same form, the descriptions of the proposals on the applications for planning permission and listed building consent are identical. Listed building consent is not required for the change of use of a building, which means that the listed building consent granted above refers only to the proposed alterations and extensions.

## **Main issues**

4. There were six reasons for the refusal of planning permission – the height and width of the proposed rear extension, the absence of a sustainability report, the layout of the 2-bedroom flat, the loss of the public house (no longer pursued by the Council), and two on the absence of a legal agreement. There were four reasons for the refusal of listed building consent (the height and width of the proposed rear extension, the proposed double-glazing, the introduction of light wells and the loss, because of the three-storey extension, of the listed building's historic envelope).
5. Flowing from the reasons for refusal, the main issues in the appeal are these: the overall effect of the proposals on the special architectural or historic interest of the listed building; the layout of the 2-bedroom flat; the absence of a legal agreement; and the absence of a sustainability report.

## **Reasons**

### ***The effect on the listed building***

6. There are essentially three strands to this issue – the height, width and impact of the proposed rear extension and the effect it would have on the original historic layout or envelope of the listed building; the impact on the character of the building of double-glazing the existing windows; and the effect on the character of the building, and also on the street scene, of the introduction of light wells. All should be considered in the context of the significance of the listed building.
7. It is a Georgian mid-terrace building. It differs from its neighbours in having a 5-bay façade where all but one of the others have three bays (the exception having four). It thus has rooms either side of the central entrance and staircase, and the plan layout is not as deep as in the 3-bay buildings. This gives the façade a certain value, emphasized (perhaps unfortunately) by the smooth-rendered finish compared to the rusticated ground floors and brick upper floors of its neighbours. The building appears to have been a public house since not very long after it was built, another factor differentiating it from its neighbours. Many of the windows appear to be Georgian, although some have horned sashes and two openings are blocked up. There are numerous constructional features typical of Georgian terraced buildings, although none particularly adds to the significance of this individual building.

### **The rear extension**

8. The proposed extension would be the full width and full height of the existing building. It would, however, continue the line of the rear façade of the adjoining building to the east and would not project unduly beyond the rear of that to its west. The parapet line would be the same as that of the existing building, which would be visually acceptable in the context of the neighbouring buildings. It is also fair to say that the existing mix of brickwork and other elements from different periods at the rear of the building detracts from its listed status; the extension would conceal the rear of the listed building but would also bring a consistency of treatment that does not presently exist. The roof form (probably unseen, save from higher buildings to the west, on Grays Inn Road and the north side of Swinton Street) would add a double pitch on the same axis as the existing M-form roof.
9. When built, therefore, the extension would not be out of keeping with the heights and building lines of the rears of the nearby buildings. It would not

be subordinate to the host building and, strictly speaking, would run contrary to the Council's guidance on extensions – but the context makes what is proposed visually acceptable.

10. Self-evidently, the proposed extension would conceal the rear of the listed building. On the other hand, its plan layout would mirror the existing building and leave its historic fabric almost entirely intact. Stairs would run up from the half-landings of the existing staircase to serve the rooms in the extension, leaving the layout and construction of the listed building plain to understand.

#### Double glazing

11. The Council accepts that double-glazed windows are to be seen in buildings in Swinton Street and elsewhere in the Bloomsbury Conservation Area but says they do not always make a positive contribution to character or appearance. It also acknowledges that the proposed double-glazing allows one of the closest approximations to traditional window types; it was accepted for use in no. 65, adjoining; that building, however, was on the Buildings at Risk Register, so approval there should not be seen as creating a precedent.
12. Looking at the windows, many are in poor condition and need substantial repairs. Whatever the repairs, though, it seems highly likely that the glazing bars would have to be replaced in order to accept even 12mm double-glazed panes in place of the existing 3mm glass. That could significantly and detrimentally affect overall repair and detailing. It is thus to be welcomed that the appellant confirmed at the site inspection that a condition stipulating single glazing would be acceptable.

#### The light wells

13. It appears from historic maps that the building originally had light wells. It is evident from the blocked up openings in the basement that there was a light well across the eastern two bays of the façade. This seems borne out by the maps – the 1833 and 1872 maps show what seem to be light wells on either side of the central entrance; the 1894 map shows one on the eastern side only (the later two maps both identify the building as a public house). The Council resists the introduction of a light well for the full width of the façade (bridged over for the central entrance) – because the existence of the beer drop and York stone paving in front of the building, and the absence of a light well, distinguishes the public house from its residential neighbours.
14. The Council no longer pursues the reason for refusal relating to the loss of the public house as a community facility. It accepts that demand is insufficient for a viable public house operation. The use now proposed has more in common with residential character of the terrace to the east and with what must be assumed to have been the original use of the appeal building. The argument is thus between retaining a reminder of the public house use, which is an important part of the history of the building, or re-introducing a feature related to what seems to have been its original use. The issue is certainly finely balanced. While one could not object to retaining what is there, that balance tips in favour of the proposed light wells because of the evidence that they originally existed and because re-introducing them would bring an element of greater urban design consistency into the historic street scene.

#### ***The layout of the 2-bedroom flat***

15. The reason for refusal refers to “poor levels of sunlight and daylight and unacceptable residential standards”. The appellant has sought to address this

at the appeal stage by way of an assessment to show that, with the introduction of additional rooflights over the ground floor living/dining area, light levels in the 2-bedroom flat would meet Building Research Establishment (BRE) standards. The Council accepts that but argues two things – that the amendments are material ones, have not been consulted upon and should therefore be rejected; and that the level of amenity for the occupiers of the flat would still be unacceptable because of the single aspect, with windows looking out only on to a small rear courtyard.

16. On the first of these, in the context of the overall proposals for the building and bearing in mind their location in relation to neighbouring properties, the introduction of the additional rooflights does not amount to a material alteration to the application scheme. No one who would have been consulted would be prejudiced by being unable to comment on their introduction. They may be accepted as a minor amendment.
17. On the second, the courtyard would be small – some 6.0m wide and varying from about 2.0m to 4.0m deep. That is hardly ideal. This is, however, a densely developed urban area, expectations of a flat in the area are likely to be coloured accordingly, the courtyard would receive daylight and sunlight from a wide arc to the south and it is capable of being made into an attractive space. On balance, what is proposed may be considered acceptable and not in conflict with what is sought by Core Strategy Policy CS5 and Development Policy DP26.

#### ***The absence of a legal agreement***

18. Annexe N to the *Procedural Guide: Planning Appeals – England* says that, to be certain that a planning obligation is taken into account, a certified copy of it must be received by the Planning Inspectorate no later than seven weeks from the start date of an appeal. In this case, there were two reasons for refusal relating to the absence of an obligation – one regarding the need to secure car-free housing, the other to secure a construction management plan.
19. The appellant accepted that an obligation was appropriate, saying that the matter could be agreed with the Council should the planning appeal be allowed. On both counts, an agreement or undertaking would be appropriate in that it would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. On the other hand, it seems that a condition on planning permission, generally to be preferred to an obligation, could secure a construction method statement which could appropriately address the Council's concerns.
20. That is not so for car-free housing. The Planning Practice Guidance (PPG) at para. ID 21a-010-20140306 advises that planning permission should not be granted subject to a positively worded condition requiring an applicant to enter into an obligation; and that a negatively worded condition is unlikely to be appropriate, save in the exceptional circumstances of a more complex and strategically important development. That exception does not apply to the appeal scheme. Accordingly, the absence of an obligation must lead to dismissal of Appeal Ref. APP/X5210/W/15/3065814.

#### ***The absence of a sustainability report***

21. The delegated report on the applications notes that the proposed renovation and repair works “will undoubtedly improve the overall sustainability of the

- building". It then says that the proposed alterations and extensions would result in a total floorspace of more than 500sqm (though why it links this with Core Strategy Policy CS13 is unclear from both the report and the Policy) and that the applicant has failed to submit an energy statement in compliance with CPG3 (Camden Planning Guidance CPG3, *Sustainability*). That appears to have been sufficient to warrant the reason for refusal.
22. In fact, CPG3 says that "Camden Core Strategy Policy CS13, paragraph 13.9 expects development or alterations to existing buildings to include proportionate measures to be taken to improve their environmental sustainability, where possible". In fact, paragraph 13.9 appears to be part of the supporting text, not part of the policy itself. The reason for refusal refers also to Core Strategy Policy CS19 and Development Policies DP22, DP23 and DP32; from reading those Policies, though, it is unclear what any have to do with the failure to submit a sustainability report.
23. There is little option but to go to the appellant's Grounds of Appeal, which sets out (though from where cannot be ascertained from the policy documentation submitted by the Council) that "*A sustainability statement should accompany applications for:*
- *all new build houses and flats*
  - *multi-occupational residential buildings with 10 or more rooms/units or occupiers*
  - *residential refurbishments, conversions and change of user for: 5 or more dwellings, or 500sqm or more of floor space*
  - *non-residential development of 500sqm or more of floor space (including offices, retail and industrial)"*
24. The first two bullet points do not apply to the appeal scheme. Nor does the third, in that only two flats are proposed and their area is clearly less than 500sqm. Nor does the fourth, because the non-residential floor area is also clearly less than 500sqm. The appellant calculates the total gross internal floor area as less than 500sqm, though to use that as a measure appears to go against a straightforward reading of the third and fourth bullet points, which differentiate between residential and non-residential uses. Whether or not that is correct, the total floor area is also less than 500sqm (checked from the application plans, in so far as that can be done accurately).
25. Accordingly, on the basis of the above quote from the Grounds of Appeal, the inference from the Council's statement that it is the total floor space that is the critical factor and the appellant's calculations of floor area, a sustainability statement was not required and the reason for refusal was unjustified.

### **Conclusion**

26. On the listed building appeal, the plan layout for the proposed extension would mirror the existing building and leave its historic layout and fabric almost entirely intact; the height would be the same as the existing building and the roof form would be appropriate in relation to the existing alongside; and the depth would give a rear building line acceptable in relation to those on either side. The proposed light wells on Swinton Street would mean the re-introduction of a feature related to the building's original residential use, in keeping with what is to be seen to the east, albeit with the loss of features

associated with the use as a public house. Retaining single-glazed windows on the frontage can be secured by condition.

27. There would be harm to the listed building but, in terms of the National Planning Policy Framework (NPPF), it would be less than substantial; indeed, it would be sufficiently little that it would be outweighed by the public benefit of bringing the building back into effective use, the previous use as a public house having been conceded as unviable. Being thus acceptable in listed building terms, there can be no reason to suggest that the appeal proposals would harm the character or appearance of the Bloomsbury Conservation Area to any greater degree or that that harm would not be outweighed by the effective use of the building.
28. The proposals would satisfy adopted Development Policy DP25 in that there would be no harm to either the special interest of the listed building or the character and appearance of the Conservation Area. They would achieve that by way of high quality design in accordance with Policy DP24. Adopted Core Strategy Policy CS14 would similarly be complied with, in that the proposals respect the local context and would preserve and enhance an element of Camden's heritage.
29. The same conclusions apply to the planning appeal. In addition, the proposed ground floor flat is acceptable in relation to what is sought by Core Strategy Policy CS5 and Development Policy DP26. The lack of a sustainability report does not appear to run contrary to the intentions of the various policies referred to in the reason for refusal. There may be doubt about whether a condition to secure a Construction Management Plan could deal appropriately with the Council's concerns and overcome the lack of an agreement, were the planning appeal to be allowed. There is no doubt, however, that the absence of an agreement to secure car-free housing represents the omission of something necessary to make the development acceptable in planning terms and also contrary to what is sought by way of Core Strategy Policies CS11 and CS19 and Development Policy DP18. Appeal ref. APP/X5210/W/15/3065814 must therefore be dismissed.

### **Conditions**

30. To grant listed building consent without attaching conditions would be inappropriate. The Council suggested four conditions, were the appeals to be allowed; only two related to listed building consent. While not needing to be suggested by the Council, the statutory time limiting condition is necessary, as is a condition to identify the approved drawings. The appropriate making good of all existing internal and external fabric is clearly essential. So too are appropriate details, specifications and/or samples of the railings around the light wells, new doors and frames, new windows and frames, rooflights, external materials, new staircases off the existing staircase and any alterations or upgrading not specified on the drawings but required to satisfy Building Regulations or Fire Certification.

*John L Gray*

Inspector

**Appeal Ref. APP/X5210/W/15/3065814**  
**61 Swinton Street, London, WC1X 9NT**  
**Schedule of conditions attached to listed building consent**

- 1) The works hereby authorised shall begin not later than three years from the date of this consent.
- 2) The works hereby permitted shall be carried out in accordance with the following approved plans: 1306/PL 01 (location plan); 1306/PL100-105 (existing plans with demolitions); 1306/PL150-151 (existing sections with demolitions); 1306/PL160-162 (existing elevations with demolitions); 1306/PL200-205 (proposed plans); 1306/PL250-251 (proposed sections); 1306/PL260-262 (proposed elevations); 1306/PL301-302 (existing internal elevations); 1306/PL401-402 (proposed internal elevations).
- 3) All making good to the existing fabric and finishes of the building, internally and externally, shall be carried out with materials and by methods to match those existing.
- 4) The works shall not begin until full details, including appropriately scaled drawings, specifications and/or samples, of the following have been submitted to and approved in writing by the local planning authority:
  - the new railings around the light wells, including materials, finishes and method of fixing;
  - all new doors and frames, including mouldings and architraves;
  - all new windows, including frames, heads, jambs, sills and glazing bars;
  - the rooflights in the 2-bedroom flat;
  - all new facing materials, including a sample panel of brickwork;
  - new staircases into the extension from the existing staircase;
  - any alterations or upgrading not specified on the drawings required to satisfy Building Regulations or Fire Certification.

The works shall be carried out in accordance with the approved details.