

McClue, Jonathan

From: Brady, Claire <Claire.Brady@HistoricEngland.org.uk>
Sent: 12 October 2016 14:39
To: McClue, Jonathan
Cc: Dunn, Michael; Rose, Charles
Subject: RE: Consultation response to Panther House Planning application ref: 2015/6955/P

Follow Up Flag: Follow up
Flag Status: Completed

Dear Jonathan,

Thank you for forwarding the applicant's Counsel's opinion for review and comment.

This legal critique of our letter of 13th January 2016 really misses the point that our letter is intended to provide advice to you, as local planning authority, in coming to a decision on the development proposals for the Panther House site. Our letter has not been worded in strict legal terminology and as a statutory consultee, we are under no obligation to do so and are certainly within our right to use any descriptive words that we consider appropriately illustrate our views.

In respect to the comment on the duty of the local authority, this is set out in S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and states that '*(1) in the exercise, with respect to any buildings or other land in a conservation area (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*'. The National Planning Policy Framework provides further clarity on how to undertake these duties and states in paragraph 137 that '*local planning authorities should look for opportunities for new development within Conservation Areasand within the setting of heritage assets to enhance or better reveal their significance*'. As a statutory consultee, it is the duty of Historic England to promote the preservation and enhancement of the character and appearance of conservation areas in England and we do this through the provision of expert advice to local authorities and developers. In respect to the application proposals for the Panther House site, we advise that the proposals do not preserve or enhance the character of the Hatton Garden Conservation Area, nor do they enhance or better reveal the significance of the Hatton Garden Conservation Area. Our letter of the 13th January 2016 sets out this advice in detail and states that we consider the proposals to cause 'significant' harm to the conservation area.

Whilst Historic England provides advice to local planning authorities and developers, the final decision on the application proposals, and indeed on the extent of the proposed harm, lies with you, as local planning authority, to determine. This is set out clearly in the NPPG:

"Whether a proposal causes substantial harm **will be a judgment for the decision taker**, having regard to the circumstances of the case and the policy in the National Planning Policy Framework".

In respect to clarifying our views on the extent of harm caused by the development proposals for the Panther House site, Historic England is of the view that the application proposals comprise a number of complex elements, each of which causes harm in varying degrees to the significance of the conservation area. Our letter retained references to paragraphs 133 and 134 of the National Planning Policy Framework in order to enable you, as decision makers, to rely on either paragraph, as you deemed appropriate. Further to our recent discussions, we accept that you intend to consider the proposals against paragraph 134 of the National Planning Policy Framework. Whilst the proposals may be considered to cause 'less than substantial' harm, we are still firmly of the view that the proposed harm is serious and should be avoided. Paragraph

134 requires that you weigh the harm against the public benefits of the proposal. We remain of the view that the application scheme does not present any heritage benefits that would outweigh the harm and we therefore advise that planning permission should be refused.

If I can be of any further assistance, please don't hesitate to contact me.

Regards,

Claire Brady
Inspector of Historic Buildings and Areas
National Planning and Conservation Department
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Please note that I work part time and am not in the office on Fridays

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From: McClue, Jonathan [<mailto:Jonathan.McClue@camden.gov.uk>]
Sent: 06 October 2016 10:43
To: Brady, Claire; Rose, Charles
Subject: Consultation response to Panther House Planning application ref: 2015/6955/P
Importance: High

Dear Claire,

Thank you again for your comments in January, for coming in to meet myself and Charlie and for your updated comments to the revised scheme.

The applicant has been unwilling to make any major design changes and has instead been trying to put forward a package of public benefits to outweigh the harm caused to the conservation area. They are continuing with their attempts to convince upper management and the application could go to the Planning Committee (subject to amendments) or be refused where it would likely to end up at appeal.

As you are aware the applicant has challenged your comments and has even gone to the expense of getting a Counsel opinion which I've attached. Whether we eventually take this to Planning Committee or refuse the scheme we would like you to comment on any further amendments as well as clarify your position stated your original letter (attached). We think it would

be beneficial for you to revise Historic England's objection to use language that is consistent with the NPPG and other relevant policy.

Para 35 of the Counsel opinion makes reference to the various terminology used in your letter and goes on to say that the degree of harm is unclear.

It would be very useful if you could re-issue your comments or provide an updated comment to clarify whether you think the development would lead to substantial harm/total loss of significance of a designated heritage asset as per para 133 of the NPPF or less than substantial harm to the designated heritage asset as per para 134.

The relevant parts of the report that would be useful to have clarification on include:

- Within the summary section: does this mean that HE considers that the development neither preserves nor enhances the CA?
- *“The application scheme proposals the full demolition of 156 Gray’s Inn Road, which is considered to make a positive contribution to the character and appearance of conservation area. As such, the proposals are considered to cause **serious harm**.” Please confirm whether this means substantial or less than substantial harm to the CA*
- *“In summary, the works of substantial demolition of 160-164 Gray’s Inn Road and erection of a new building at 156-164 Gray’s Inn Road are considered to cause **significant harm** to the character and appearance of the conservation area.” Please confirm whether this means substantial or less than substantial harm to the CA*
- *“The substantial demolition of the tram substation and the proposals to provide additional accommodation at roof level are considered to cause **some harm** to the aesthetic character of the conservation area, but this is **limited** due to the positioning of the substation at the heart of the site. The loss of the open alleyway to Brain Yard would have a **more significant impact** on the street scene and the provision of a replacement covered route through the building would change the character and nature of this space away from a former industrial yard into a semi internal space. Similarly, the loss of the workshop uses, which particularly characterise the Hatton Garden Conservation Area, would be a **significant loss**. As such, these proposals are considered to **cause harm** to the character and appearance of the conservation area.” Please confirm whether this means substantial or less than substantial harm to the CA*
- *“Overall, these proposals serve to **neutralise the character** of the buildings and make them appear simply as foreground facades to a large new building behind. It would also be highly apparent that the buildings were no longer in industrial or workshop use, which particularly characterises the Hatton Garden Conservation Area, due to the size and character of the building. As such, these proposals are considered to cause **significant harm** to the character and appearance of the conservation area.” Please confirm whether this means substantial or less than substantial harm to the CA*
- *“In our view, the proposals cause **significant harm** to the character and appearance of the conservation area and need to be assessed according to current government conservation policy, which states that the demolition of buildings that make a positive contribution to the significance of a conservation area is harmful to the historic environment and needs to be justified under paragraph **133 or 134** of the National Planning Policy Framework.” Please*

confirm whether this means substantial or less than substantial harm to the CA. You state that it needs to be justified under para 133 or 134 of the NPPF, which paragraph/degree if harm does HE think applies in this case?

- *“As such, the proposals are considered to cause **serious harm** to the character and appearance of the Hatton Garden Conservation Area and again need to be justified under paragraph 133 or 134 of the National Planning Policy Framework.” Please confirm whether this means substantial or less than substantial harm to the CA. You state that it needs to be justified under para 133 or 134 of the NPPF, which paragraph/degree of harm HE think applies in this case?*
- *“In considering the extent of the harm against any public benefits that may arise from the proposals, we do not consider that the scheme presents any heritage benefits that would outweigh the harm to the significance of the conservation area.” I understand that HE does not consider there are any heritage benefits. Para 133 and 134 state that any harm should be outweighed by public benefits. Has HE used this in their balance or is that purpose for us only as the decision maker?*

As stated the application might be taken the Planning Committee which would mean that we need to make HE's position very clear to our Members. It would be very useful if you could clarify your position with regards to the NPPF and other relevant policy. This application could be taken to a public inquiry if refused by us or Members so it would be useful to have HE's position clarified. You mentioned previously that you would be willing to support the Council at an appeal and as you can see from their Counsel opinion, they'd be likely to challenge many aspects of your comments.

Kind regards,

Jonathan McClue BPlan (Hons)
Principal Planning Officer
Regeneration and Planning
Supporting Communities
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