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## Appeal Decision

Site visit made on 24 May 2021

**by M Cryan BA(Hons) DipTP MSc MRTPI**

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

**Decision date: 28 June 2021**

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**Appeal Ref: APP/X5210/W/20/3260437**

**142 Shaftesbury Avenue, London WC2H 8HJ**

- 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 BrewDog Retail Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2020/0482/P, dated 27 January 2020, was refused by notice dated 7 April 2020.
  - The development proposed is the installation of access doors (following removal of existing windows) on ground floor West Street and Shaftesbury Avenue elevations; Installation of first floor balcony on West Street and Shaftesbury Avenue elevations, with associated access door (following removal of existing window) (Use Class A4).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form. The proposal was originally described on the planning application form as "alterations to the building". However, an amended description was agreed between the parties by e-mail on 27 May 2020, which I have therefore used as it more accurately describes the nature of the proposed development.

### Main Issues

3. The main issues are the effect of the proposed development on:
  - The character and appearance of the host building and the Seven Dials (Covent Garden) Conservation Area.
  - Living conditions in respect of overlooking and privacy for occupiers of Gloucester Mansions (140A Shaftesbury Avenue); and
  - Living conditions in respect of noise and disturbance for neighbouring residents generally.

### Reasons

4. The appeal property is a purpose-built public house dating from the late 1880s originally (and for most of its existence) known as the "the Marquis of Granby", but operated by and branded as "BrewDog" since 2018. It is on a corner plot where Shaftesbury Avenue, Earlham Street and West Street converge at the

eastern side of Cambridge Circus. It is in a busy and vibrant central London location, with a wide variety of theatres, bars, restaurants and shops in the surrounding area. There are also numerous residential units on the upper floors of nearby buildings, including at 36-38 West Street, Cambridge Court (which wraps around the appeal site and has frontages to both Earlham Street and West Street), and Gloucester Mansions at 140A Shaftesbury Avenue.

5. The appeal building is characterised by a painted timber shopfront separated by granite pilasters at ground floor level. The main entrance, situated at the corner on the short Cambridge Circus frontage, forms the focal point of the building, accentuated by pilasters and decorative corbel brackets and cornice surrounds. The shopfront bays to Earlham Street, Shaftesbury Avenue and West Street have timber panelled stall risers with large windows above. The first and second floors are characterised by red brick elevations, sash windows and stucco detailing, with the first floor being more ornate than the second. The customer area of the ground floor bar extends into the neighbouring building at 36-38 West Street, although this lies outside the "red line" boundary of the appeal site.
6. The proposed development can be broken down into two elements. Firstly, at ground floor, the appellant wishes to replace two shopfront windows and stall risers on the West Street frontage, and one on the Shaftesbury Avenue frontage, to create three new entrances each with a pair of double doors. Secondly, the appellant wishes to install a balcony at first floor level, with one of the sash windows on the West Street elevation being replaced with a doorway to provide access to the balcony.

#### *Character and appearance*

7. The appeal site is within the Seven Dials (Covent Garden) Conservation Area ("the Conservation Area"). I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the National Planning Policy Framework ("the Framework") states that they should be conserved in a manner appropriate to their significance (paragraph 184). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 194) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 196).
8. The Council's 1998 Conservation Area Statement ("the CAS") indicates that the special character of the Conservation Area is found in the range and mix of building types and uses and the street layout, and that it is not dominated by one particular period or style of building but rather it is the combination of these which is of special interest. The sub-area including the appeal site is characterised by the closely built-up narrow streets, including Earlham Street, radiating from Seven Dials itself.
9. The appeal site is at the edge of the Conservation Area, and indeed at the edge of the borough; the buildings on the west side of West Street, and all of Cambridge Circus apart from the appeal site and the buildings on the north east side between Shaftesbury Avenue and Charing Cross Road are within the City of Westminster. Cambridge Circus is a large and busy public space at the heart of London's West End, bounded by a theatre and various pubs and restaurants. The appeal property is relatively modest in size and detailing when compared to some of the other buildings on the Circus, but it is not

overwhelmed by its neighbours, and it contributes to the coherence and quality of the Circus as a whole. It also forms an attractive gateway to the Conservation Area from the west, and although not listed as such in the CAS, I agree with both main parties that it makes a positive contribution to the Conservation Area.

10. The CAS indicates that the loss of original features and detailing such as door and window pediments and timber shopfront facades contributes to the erosion of the distinct qualities of the Conservation Area. Guideline SD7 advises that these should be retained, and only replaced when there is no alternative or where it would enhance the appearance of the building through the restoration of missing features. Although the curve-topped upper windows would be retained in the three shopfront bays where new doorways would be formed, the timber panelled stall risers would be lost. The granite pilasters would be retained and so the creation of a continuous "visual void" at times when the doors were open would be averted. However, the loss of the stall risers and their panelling, as well as the replacement of the large windows with doorways, would, whether the doors were open or closed, appear incongruous and inauthentic in the context of the otherwise well-preserved pub building. This would detract from its appearance, and diminish its contribution to the traditional character of the Conservation Area.
11. The proposed balcony at first floor level would be around 1m deep, and wrap for 20m or so around the West Street, Cambridge Circus and Shaftesbury Avenue frontages. It would have a balustrade approximately 1.1m high, and the whole installation would be made of steel and painted black. Although the balcony would be of a simple design, it would be a substantial addition to the appeal property. Large parts of the sash windows, their surrounds and other detailing at first floor level, including the more intricate corner "bay" window on the short but focal Cambridge Circus elevation, would be obscured by the balcony. It would therefore disrupt the coherent appearance of the building as a whole, undermining its contribution to the composition of Cambridge Circus and introducing a prominent and discordant element at a gateway to the Conservation Area. The harm that would be caused to the appearance of the host building would not be mitigated by the proposed planting around the base of the railings, which on the basis of the submitted drawings and other evidence would fall well short of the generous foliage which characterised the building in its time as the Marquis of Granby, and would provide little visual relief from the harsh and intrusive steelwork of the balcony.
12. The appellant has drawn my attention to opening shopfronts on other bars and restaurants, including those at Café Bohème and Wun's Tea Room which face each other across the junction of Old Compton Street and Greek Street a short distance from the appeal site, and one further afield at 82 Camden High Street. I saw the first two of these at the time of my site visit and, even setting aside that they are within the City of Westminster (and thus subject to different development plan policies), the buildings and streets are of a different scale and character to the appeal site. What is appropriate and acceptable for converted or adapted shopfronts cannot necessarily be translated to a purpose-built and well-preserved Victorian public house. None of the opening shopfronts to which the appellant referred, or indeed others I saw nearby, appears comparable to the appeal proposal, nor do they add weight in support of this particular scheme.

13. Similarly, regardless of their precise form or location, the pub terraces to which the appellant drew my attention are situated on flat roofs (or a portico, in the case of the Punch and Judy at Covent Garden), and none seems to me to be comparable to the erection of an entirely new cantilevered steel balcony oversailing the street as proposed in this case. Finally, I saw the canopies at the nearby Palace Theatre and Ambassadors Theatre at the time of my site visit. They differ markedly from one another in size, design and detailing; the Palace is in a prominent position on the other side of Cambridge Circus from the appeal site and its canopies extend round much of the building, but for the most part they are relatively discreet when seen against the large theatre itself. The canopy at the Ambassadors is a smaller and simpler affair, in a less prominent position within the Conservation Area than the appeal site. Each is in keeping with the character of its host building and does not dominate it, which for the reasons I have set out above I do not consider to be the case here. Neither example therefore weighs in support of the appeal proposal.
14. I do not disagree with the appellant that buildings evolve over time and “simply because a feature is not original it does not mean it is inappropriate” – and I acknowledge that this can perfectly well be applied to buildings in Conservation Areas. However, in this case I consider that the installation of additional ground floor doors and the loss of traditional shopfront features, and the prominent and intrusive balcony at first floor level would, as I have described, be harmful to the character and appearance of the host building. Given the appeal site’s prominent setting I also consider that the character of the Conservation Area would not be preserved, although in the Framework’s terms the harm to the Conservation Area as a designated heritage asset would be less than substantial.
15. Notwithstanding the vagaries of London weather, additional outdoor space and natural ventilation are likely to be attractive to customers as the effects of the Covid-19 pandemic linger on, although any positive claims for the scheme’s health benefits may be undermined by the indication that the balcony is intended primarily as a smoking area<sup>1</sup>. However, there would be economic benefits resulting from the provision of additional customer space at a licensed premises within London’s Central Activities Zone, supporting the growth of the appellant’s business and the area’s role in the local, national and visitor economy. While the overall benefit of a small increase in capacity at a single business would be relatively limited in the context of the busy and vibrant West End, it is nonetheless a positive factor in the scheme’s favour which attracts modest weight. However, this would not outweigh the harm to the heritage asset to which I must attribute great weight.
16. The proposal therefore conflicts with Policies D1 and D2 of the 2017 Camden Local Plan (“the CLP”), which together seek to ensure that new development is of a high quality design which contributes positively in complementing local character, whilst preserving or enhancing the historic environment and heritage assets including conservation areas. It also conflicts with the provisions of the Framework which seek to conserve and enhance the historic environment.

*Living conditions – overlooking and privacy*

17. Gloucester Mansions (140A Shaftesbury Avenue) sits across West Street from the appeal site. The first floor of the appeal premises is a public drinking area,

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<sup>1</sup> It is described as such in the submitted Acoustic Assessment.

and West Street is relatively narrow. I saw at my site visit that there is already some overlooking from within the appeal site to the first-floor flats on the West Street side of Gloucester Mansions. However, it seems likely to me that, in a densely-built central London location, the occupiers of those flats might expect to be overlooked from neighbouring buildings to some degree and therefore some consequential loss of privacy would be tolerated. I also note that overlooking at present is limited to some extent by the relatively narrow width of the sash windows, as well as by the internal seating arrangements in the upstairs bar.

18. The proposed balcony would project over the pavement of West Street, and so would put customers considerably closer to the flats within Gloucester Mansions than at present. There would be no seating so customers on the balcony would need to stand, and as a result their views towards and into Gloucester Mansions would be significantly less restricted than those which are currently possible from within the first-floor bar. Beyond this, the perceived loss of privacy would also be likely to be greatly increased, as customers would no longer be concealed within the appeal premises but directly visible in the open air, close to and at around the same level as the rooms within Gloucester Mansions.
19. Overall, I consider that there would be a significant and harmful loss of privacy for the occupiers of flats within Gloucester Mansions. The proposal would therefore conflict with Policy A1 of the CLP, which among other things seeks to ensure that development proposals protect the privacy of neighbours. It would also conflict with the requirements of the Framework, in particular paragraph 127 which seeks to create places which have a high standard of amenity for existing and future users.

#### *Living conditions – noise*

20. The various residential properties near to the appeal site are sensitive to increased noise from surrounding developments, and Policy A4 and Appendix 3 of the CLP set thresholds for assessing these impacts. The appellant has submitted an acoustic assessment ("AA") in respect of the noise impacts of the proposed balcony. The AA concludes that due to the existing relatively high sound levels in the vicinity of the appeal site arising from the combination of traffic noise and pedestrian activity, noise emissions from customers using the proposed balcony would be below the lowest measured existing residual sound level, and would fall within the "green" (acceptable) level set out in the CLP.
21. The Council has commented that the noise survey was carried out in July 2020, at a time when the impact of Covid-19 lockdown restrictions was still felt, and traffic, pedestrian activity and the number of customers visiting bars and restaurants was considerably lower than "normal". The Council also indicated that the sound power level used in the AA to calculate the noise effects of customers talking was lower than it considered appropriate, and thus the effects were understated in the AA. However, Appendix 3 of the CLP sets a "green" level by reference to the existing residual sound level, so if the area was busier and noisier, the acceptable threshold would also be set higher. The appellant's technical consultant calculated that, even using the higher source sound level proposed by the Council, the resultant noise emissions from the balcony would still meet the "green" criteria, and no significant disturbance

would be caused to nearby residents. On the basis of the evidence before me, I see no reason to disagree.

22. Assessing the effect of noise is not solely a technical exercise, and there are of course also subjective elements to consider. It seems likely to me that, given the close proximity of the proposed balcony to neighbouring flats, as well as the relative quietness of West Street compared to much of the surround area, there would remain some potential for disturbance to be caused to nearby residents. This would be likely to occur later in the evening when the side streets are generally becoming quieter (accepting that in an area such as this there are late peaks in activity, for example when theatres empty) but customers of pubs and bars may be becoming louder. However, if the proposal had been acceptable in all other respects, conditions could be imposed to limit the number of customers allowed on the balcony, and the hours at which use of the balcony would be permitted. In my view these would be justified to ensure that the development did not lead to unacceptable noise disturbance for neighbouring residents.
23. Subject to the use of such conditions, I conclude that the development would not have an unacceptable effect on the living conditions of the occupiers of nearby residential properties in respect of noise and disturbance. In this matter, the proposal would therefore comply with Policies A1 and A4 of the CLP, which together seek to ensure that development proposals do not cause unacceptable noise disturbance to neighbouring occupiers. It would also comply with the requirements of the Framework in this respect.

### **Other Matters**

24. The proposed development was also refused planning permission because of the absence of a construction management plan (CMP) and an appropriate financial contribution towards "CMP implementation support". The Council's decision notice indicated that this reason for refusal could be overcome by a s106 planning obligation, and the appellant's statement acknowledged the need for such an obligation in order to comply with relevant development plan policies. However, while the appellant indicated that they would contact the Council to prepare a suitable planning obligation, there is none before me in any form. In these circumstances, as the appeal is being dismissed for other substantive reasons there is no need for me to consider the necessity of such an obligation, as it could not alter my overall conclusion.
25. The appeal site is close to Listed Buildings; the aforementioned Grade II\* Palace Theatre, the Grade II former church at 24 West Street, and the Grade II F. W. Collins shop and accommodation at 14 Earlham Street. The Council did not identify any harm in respect of the setting of these buildings, and based on the evidence before me and my observations on site I see no reason to disagree. However, this is a neutral factor which does not weigh in favour of the proposal.

### **Planning Balance and Conclusion**

26. The proposed development would be acceptable in terms of its effects on neighbours' living conditions arising from noise. However, it would be unacceptable in terms of overlooking and the consequent loss of privacy for neighbouring residents. It would also be harmful to the character and appearance of the host building, and to the Seven Dials (Covent Garden)



Conservation Area, and this harm must be afforded great weight. The harm I have found is not outweighed by the public benefits of the scheme. Consequently the development as a whole is not acceptable.

27. As I have described in paragraph 6 above, there are two elements of the scheme which I consider to be clearly severable. The appellant has requested, in the event of my being unable to allow the appeal in full, that I consider the acceptability of the two parts in isolation. However, as I have found that both parts are unacceptable in terms of their effects on the character and appearance of the host building and the Conservation Area, it would not be appropriate for me to issue a split decision.
28. The scheme conflicts with the development plan read as a whole. None of the material considerations identified, including the Framework, outweigh this conflict or justify a decision other than in accordance with the development plan. The appeal is therefore dismissed.

*M Cryan*

Inspector