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08 October 2021

Via email only

FAO Vicky Williams

Dear Vicky,

Town and Country Planning Act 1990 & Planning (Listed Buildings and Conservation Areas) Act 1990

Appeal by Mr Thakkar

Site Address: 64 Lincoln's Inn Fields, London, WC2A 3JX

Appeal Ref: APP/X5210/W/21/3271097 & APP/X5210/Y/21/3270198

Thank you for your letter dated 27 September enclosing the local Planning Authority's statement in relation to the above appeals. Please accept this letter as a response to the matters raised. For brevity, any matters that are addressed in the appellants appeal statement will not be repeated here.

LPA STATEMENT

In summary, a rebuttal to the LPA statement is largely provided in the appellants appeal statement. Where other matters are raised or clarification required, the Inspector is respectfully requested to note the following:

Structural:

On structural matters, the appellants Structural Engineer who authored the Structural Assessment comments as follows:

The Council's appeal statement does not accurately reflect the information and evidence-based conclusions presented and evaluated within the appellants Structural Assessment Report of 10 July 2020 and its Addendum thereto of 12 February 2021.

Both of these documents are based on careful and detailed visual and targeted intrusive inspections of the roof and other relevant areas of the building, and the proposals have been developed with much deliberation so as to minimise the loss of all existing fabric, with particular care taken to ensure the retention of all especially important historic fabric which will be re-used in a manner replicating its original function.

The evidence for at least one previous roof structure is compelling and the present roof form is not unusual for properties of this type. We have inspected every roof timber and the oldest we have identified dates from no earlier than the mid-18th century; these elements constitute approximately 1% of the surviving structure, the remainder being of mid-19th century origin or later.

The (council's) appeal statement also refers to modern braces supporting antique timbers which is an inaccurate representation of the surviving roof structure which is evidently much altered following at least one campaign of general deconstruction and replacement.

The (council's) appeal statement incorrectly refers to the loss of 'all the roof' but our Structural Assessment Report and Addendum clearly state that we are confident the overwhelming majority (over 95%) of the structure is capable of re-use, and it will be, however it is inevitable during any alteration of this nature that some limited curtailment of structural members is unavoidable and also that on commencement of the works a very small portion of the timbers will be discovered to be defective and beyond practical repair. Our Structural Assessment Report contains a considered and pragmatic methodology that will ensure the careful recording, tagging, deconstruction, storage and reconstruction of the roof structure, developed specifically to avoid the 'heap of rafters' to which the appeal statement refers.

Reason for refusal 1:

In relation to Reason for Refusal 1 (Design and Heritage) the council makes a number of points. These are considered in more detail below with reference to the appellant's Appeal Statement: Appendix A and to the Heritage Appraisal submitted in support of the appeal scheme.

It should be noted that no evidence has been provided by the council in its appeal statement that contradicts or disproves the findings in relation to the appeal building and its historic development that are set out in the original Heritage Appraisal and subsequent appeal statement.

Importantly, in its appeal statement (3.1.19), the council agrees that the existing roof form is not original to the building and that it would originally have had an M profile roof.

The originality of the existing roof and its contribution to the overall significance of the building has previously been a matter of concern in past decision making in regard to the site as explored in Appendix A of the appellants Appeal Statement. The council's *in principle* agreement with the facts that the roof is not original and that a M profile mansard roof would have been present historically is in line with the council's delegated report that sets out at 4.11 that the work '*may reproduce an accurate reconstruction of this part of the building, i.e. the front façade at a previous stage in the building's life.*'

The council also notes at 4.6 of its delegated report that the design of the proposed mansard would accord with Historic England’s design guidance.

Although the above points are agreed, the council provides further amplification on its reason for refusal within their appeal statement. Where relevant, and where a response is necessary, the council’s statement is considered in more detail below:

- At paragraph 3.1.2, the council writes that ‘*Whenever it [the appeal building] was constructed, the current façade is essentially Palladian in influence.*’ The council agrees in their delegated report that the building is mid-17th century in date (delegated report, Site Description). The Heritage Appraisal describes the involvement of Inigo Jones in Lincoln’s Inn Fields and how the design of the houses on the west side of the square were strongly influenced by Jones’s work, particularly that seen in Covent Garden (2.11). Jones was the first British architect to use Vitruvian principles of proportion and form (as Palladio had been the first in Italy) and the original buildings of Lincoln’s Inn Fields followed such principles. As set out in the Design & Access Statement submitted with the refused application, the appeal scheme seeks to reinstate the correct proportions of the appeal building, based on the Golden Ratio, effectively enhancing what could be considered as a Palladian (or Jonesian) composition. A key aspect of 17th century classical architecture in London was that certainly in many cases, including with domestic buildings, visibly expressed, habitable roofs formed part of the overall composition of the building (Heritage Appraisal). Simply put, a classically inspired building, Palladian or otherwise does not preclude the possibility of a visible roof form, particularly in 17th century London. This fact is fully illustrated within the Heritage Appraisal at figures 1-3, 4, 5, 6 and 8. The council has presented an overgeneralised view on Palladian architecture without taking into account the facts.
- At paragraph 3.1.4, the council states that the roof of the building cannot be seen, this is incorrect (see figure A below). The front pitch is visible together with the inappropriate lead flashing to the parapet.



Figure A: No. 64 Lincoln’s Inn Fields with the roof and lead flashing visible.

- At paragraphs 3.1.3 – 3.1.9, the council raises points in relation to the structure of the existing roof, some of these are speculative while others fail to take into account the evidence provided in the Heritage Appraisal and the Structural Assessment Report prepared by Conisbee. The Council agrees that *'These observations are not presented as the actual facts of the case.'* The council notes at 3.1.9 in relation to the roof that *'Once dismantled, it's would result in a heap of rafters.'* This is clearly not the case, as almost all would be reused in a scholarly manner within the new roof structure (Appeal Statement Appendix A, paragraphs 3.28-3.30 and in Kevin Clark of Conisbee Structural Engineers additional comment on the council's appeal statement above). The existing roof form, which has developed by accident rather than design and is clearly incidental to the more significant parts of the building, is the result of successive phases of reconfiguration and reworking and incorporates timbers from a variety of periods (Appendix A of appellants appeal statement 2.11-2.14). It would appear to be the case that in 2015, the Inspector did not make specific reference to the loss of fabric but focused principally on the visual effect of the proposed mansard and the loss of the roof form which, at the time, was considered to be original to the building.
- Paragraph 3.1.6 of the council's appeal statement is purely conjecture.
- At paragraph 3.1.11, the council makes the claim that the appellant's justification is that *'alterations made to the building in the 18th and 19th centuries have so compromised its value that significant alterations can be made to its façade and general form without harm.'* As shown in the Heritage Appraisal that supported the application and the appellants subsequent Appeal Statement, this is not the justification offered by the appellant. Rather, the appellant argues that the later alterations made to the roof have lesser value than the underlying 17th century house and this should be taken into account in decision making. That is, there is scope to alter the existing roof as it is not original to the building and is of far lesser historic and architectural value than previously thought. The council agrees with this opinion at paragraph 3.1.13 of their appeal statement setting out that the fact that the upper storey and its roof are not original and are therefore less significant than the older parts on which they stand *'is not at issue.'* The significance of the elements that would be 'restored' (the roof) decisively outweighs the significance of those that would be lost. The work proposed is justified by compelling evidence of the evolution of the heritage asset and is executed in accordance with that evidence. The form in which the heritage asset currently exists is not the result of a historically-significant event. The work proposed respects previous forms of the heritage asset. The existing roof has a M form and previous iterations of the roof that can be discerned from the fabric of the roof also had an M form.
- At 3.1.12 the council sets out that *'The appellant claims to have discovered that the house in fact dates from the 17th century, so might originally have had an M-shaped mansard roof of the type proposed.'* The council goes on to agree that *'This argument might hold some water'* were it not for the fact that *'this is also the means whereby an additional storey of rentable space is created.'* The proposals have been derived from an enhanced knowledge of the building and it is considered unreasonable to suggest here that the evidence has been made to fit a commercial imperative. Lowering the height of the second floor is not desirable in

commercial terms but it is proposed in order to enhance the proportions of the principal's elevations.

- At 3.1.12 the council also states that *'Current conservation practice is does not seek to making things look older than they are.'* It is not clear what this refers to. Needless to say however, there are numerous policies and guidance documents that seek enhancements to Heritage Assets through change (NPPF – paragraph 206; Historic England's *Making Changes to Heritage Assets* (2016) – paragraphs 41 and 49); Historic England's *Conserving Georgian and Victorian Terraced Housing: A guide to managing change* (2020). The latter sets out at page 7 that *'A good starting point is to establish as far as is reasonable the intentions of the original developer of the terrace, placing it within its historical and social context. This will then assist understanding of the importance of the plan form, the materials used, boundary treatment and the wider role of the house as part of the terrace in the street and immediate context.'* Page 7 notes that: *'In many cases there are also opportunities to restore lost elements eroded through past changes and enhance the significance of not just the individual house, but the terrace as a whole.'*
- At 3.1.14, the council sets out that *'at no point it is shown that a four storey plus mansard building existed here, so the construction of such a building is not even a speculative reconstruction.'* The appellant has never claimed to reinstate an authentic 17th century building on this site but has sought to demonstrate that the existing roof form is not original to the building and in the context of a 17th century building and nearby highly graded 17th century development, the roof has little value and does not make a positive contribution to the significance of the appeal building. In addition, it is the case that a roof of the type proposed, which follows the existing and earlier iterations of the roof profile will better reveal the significance of the listed building. The council has agreed that the roof and upper storey are of lesser significance than the lower part of the building (3.1.13), that a M profile mansard once existed and that the existing roof is not original (3.1.19).
- At paragraph 3.1.14, the council claims that *'we would be left with a 17th century building as a giant structure that never existed on this site.'* As set out above, the appellant has never claimed to fully reinstate a 17th century building. Instead, the appellant has demonstrated that the proposals would not result in the loss of an original or historically valuable roof structure. The appellant has also demonstrated that the proposals are appropriate in relation to the host building and to their immediate and wider context. In addition, it has been demonstrated that the proposals would illuminate and amplify the historic and architectural significance of the 17th century building and nearby 17th century development. This is addressed at paragraphs 4.14-4.25 of Appendix A of the appellants Appeal Statement. With regard to whether the proposal would result in a 'giant' structure, we would direct the Inspector to the existing and proposed drawings of the appeal scheme which highlight the contextuality of the proposed height, itself a minimal increase on that of the existing building.
- At paragraph 3.1.15, the council notes that the proposal is harmful to plan form. It does not elaborate on this assertion. Issues relating to plan form have never formed part of any previous refusal or appeal decision. Appendix A of the appellants Appeal Statement notes at

3.31-3.35 that the plan form would not be harmed and indeed, a traditional floor hierarchy, more redolent of the Palladian architecture that the council refers to in its appeal statement at 3.1.2, would be reestablished internally and externally.

Reasons for refusal 2 & 3:

At 2.1 of the LPA statement it is acknowledged that reasons for refusal 2 and 3 could be overcome by entering into an appropriate s106 lease agreement. The Heads of Terms are clearly set out in the delegated officer report and it was therefore considered by the appellant that a Unilateral Undertaking would sufficiently capture these requirements.

At section 4 of the LPA statement, comments are made about the appellants draft Unilateral Undertaking that supported the appeal submission. A response to the LPA comments on the Undertaking are provided below from the appellants solicitor:

***“4.3. Accordingly the Council sets out below why it considers the UU as submitted to be defective:-
4.3.1. As mentioned above the UU is unsigned and undated. Presumably this will be rectified but as it stands it is not an effective legal document.”***

Indeed. The Unilateral Undertaking needed to be submitted as a draft so that it could be “tweaked” following any comments from the LPA.

“4.3.2. The recitals do not confirm that the Owner has an interest in the site in accordance with the requirements of s106 of the Town and Country Planning Act.”

Recital 2 already made that clear, but additional wording has been added to the Undertaking reflecting the LPA’s comment.

“4.3.3. The definition of “Commencement” has several exemptions which are not relevant to the proposed development on the site and their inclusion renders the UU to be ambiguous and unconcise. For example, the addition of a mansard roof on an existing building does not require demolition, site decontamination, excavation works, clearance of the Property nor works connected with infilling. It is unclear whether archaeological works would be required and what they would be on a site/development of this nature so this too would be unclear. Really the only matters which could potentially be relevant are site surveys and erection of hoardings, neither of which could possibly be associated with commencement of a permission in any event.”

The development consists of one dwelling. Therefore, in this case the Appellant is willing to forego the usual exclusions to the definition of Commencement and has amended the draft Undertaking accordingly.

“4.3.4. The definition of “Occupation Date” is similarly drafted to exclude occupation for the purposes of construction, fitting out, marketing or security. Again, this renders the UU imprecise and difficult for the Local Planning Authority to enforce. It is clear, especially with the wording “pursuant to the Planning Permission” that occupation means when people are residing in the unit. Therefore the addition of construction, fitting out and security are extraneous and should be removed. Excluding of marketing is where enforcement becomes difficult because this can often

mean (if not selling off plan) that the premises are “dressed” with furniture as if someone was living in the property. This should therefore be removed from the UU.”

The Development consists of one dwelling and Occupation is now pertinent for clause 4.2 only. Therefore so in this case the Appellant is willing to forego the usual exclusions to the definition of Occupation and has amended the draft UU accordingly.

“4.3.5. Clause 2.2 is an obligation on the Council as it registers items on Local Land Charges and therefore should be removed as the Appellant cannot compel the Council do anything under a UU. Clause 5.2 covers this in any event.”

Clause 2.2. is an acknowledgement by the Owner, it did not purport to put an obligation on the Council. The wording of 2.2 has been tweaked in response to the LPA’s comment.

“4.3.6. Clause 4.1 requires that the Owner pays the Affordable Housing Contribution prior to the Residential Unit being occupied. The Camden Planning Guidance document entitle Housing CPG 2021 states at paragraph 6.46:- ‘We will generally expect financial planning obligations (payments) secured through a s106 agreement to be met (paid) when implementation of a development commences. For most financial obligations, payment upon implementation is necessary to ensure that the required infrastructure or mitigation is in place before the development is occupied, or as soon as possible afterwards. In the case of payments towards housing and affordable housing, payment upon implementation enables us to deliver affordable housing in tandem with non-residential development and market housing, maintaining the mixed-use character of the borough and mixed, inclusive and sustainable communities’

“4.3.7. Therefore the UU should require payment on commencement of the development rather than occupation of the same in order for it to be acceptable.”

The Development consists of one dwelling and the Contribution sought by the Council is £6,083. Therefore, in this case the Appellant is willing to pay the Contribution on Commencement and has amended the draft UU accordingly.

We trust that the revised Unilateral Undertaking appropriately secures the Affordable Housing Contribution and car free restrictions and so addresses Reasons for Refusal 2 and 3. A certified copy of the Undertaking has been forwarded separately by the appellants solicitor.

I would be grateful if you would consider these comments and the supporting unilateral undertaking, in response to the LPA statement.

Yours sincerely

Allen Sacbucker
Associate
SM Planning