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## Appeal Decisions

Hearing held on 27 November 2013

Site visit made on 27 November 2013

**by S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 9 January 2014**

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### **Appeal A: APP/X5990/A/13/2203202**

#### **Hotel Columbus, 141 Sussex Gardens, London W2 2RX**

- 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 John Todd against the decision of City of Westminster Council.
  - The application Ref 12/11297/FULL, dated 12 November 2012, was refused by notice dated 5 April 2013.
  - The development proposed is erection of rear extensions at ground and first floor levels to provide three additional rooms for the existing hotel.
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### **Appeal B: APP/X5990/E/13/2203221**

#### **Hotel Columbus, 141 Sussex Gardens, London W2 2RX**

- 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 John Todd against the decision of City of Westminster Council.
  - The application Ref 12/11298/LBC, dated 12 November 2012, was refused by notice dated 5 April 2013.
  - The works proposed are erection of rear extensions at ground and first floor levels to provide three additional rooms for the existing hotel. Associated internal alterations at ground and first floor levels.
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### **Decision Appeal A**

1. I dismiss the appeal insofar as it relates to the ground floor extension. I allow the appeal insofar as it relates to the first floor extension and grant planning permission for rear extension at first floor level to provide one additional room for the existing hotel at Hotel Columbus, 141 Sussex Gardens, London W2 2RX in accordance with the terms of the application, Ref 12/11297/FULL, dated 12 November 2012, subject to conditions 1) to 9) on the attached schedule.

### **Decision Appeal B**

2. I dismiss the appeal insofar as it relates to the ground floor extension. I allow the appeal insofar as it relates to first floor extension and grant listed building consent for rear extension at first floor level to provide one additional room for the existing hotel and associated internal alterations at first floor level at Hotel Columbus, 141 Sussex Gardens, London W2 2RX in accordance with the terms of the application, Ref 12/11298/LBC, dated 12 November 2012, and the plans submitted with it so far as relevant to that part of the works hereby consented and subject to conditions 1) to 6) on the attached schedule.

## **Procedural Matters**

3. The submitted appeal drawings included number 108A, the revision being to the rear light well against number 16 Radnor Mews. The Council were of the view that this drawing had not been available for neighbouring residents to consider and that there was a risk of their concerns being prejudiced. As a result drawing 108 will be considered in the appeal instead.
4. The Council have no objection regarding the effect on daylight to adjoining properties, having considered this and determined that the effect is not sufficient to add to the reason for refusal on outlook, noise and privacy. The occupier of 17 Radnor Mews did object on this matter and in response the appellant tabled a sunlight and daylight report at the Hearing. Although the objector was present at the Hearing, the technical nature of the report was such that time was given after the close of the Hearing for them to consider it and respond, after which the appellant sent their final comments. Those comments included a plan which did not correctly show the location of the kitchen units, but this Decision is based on what was seen at the site inspection.
5. Representation was received in the Planning Inspectorate after the close of the Hearing from the Chairman of the Hyde Park Estates Association, but no reason was given on enquiry as to why this information had not been made available earlier. In fact the Association had made extensive representation to the Council at the time of their consideration of the proposals, and that correspondence was available at the Hearing. That earlier correspondence had been seen by the appellant who would have been able to comment on it. No interests have been prejudiced by the later representation being returned.
6. The Council had recently adopted the *Westminster City Plan; Strategic Policies* and although it was agreed that the policy aims stated in the reasons for refusal had not changed, the numbering had;
  - Policy S25 Heritage has replaced Policy CS24.
  - Policy S28 Design has replaced Policy CS27.
  - Policy S29 Health, Safety and Well Being has replaced Policy CS 28.
  - Policy S32 Noise has replaced Policy CS31.

Unitary Development Plan policies referred to remain unaltered; DES1 on the principles of urban design and conservation, DES5 on alterations and extensions, DES9 on conservation areas, TACE2C on extensions to hotels outside the Central Activities Zone, ENV6 on noise pollution and ENV13 on protecting amenities, daylight, sunlight and environmental quality.

## **Main Issues**

7. These are;
  - In both Appeal A and Appeal B, the effect of the proposals on the architectural or historic significance of the listed building and its setting, and on the character and appearance of the Bayswater Conservation Area.

- In Appeal A only, the effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to outlook, noise, privacy and daylight.

## **Reasons**

### *Listed Building and Conservation Area*

8. The Council does not object to the first floor extension, and it does appear to be the case that built form in this location is common along the rear of the terrace. The addition of one more on the appeal site would not disrupt the line of the terrace or intrude unduly into open space. The significance of the listed building and the conservation area would not be adversely affected and the provision of an additional guest room adds further weight to the acceptability of this part of the proposal.
9. Turning to the ground floor extension, this would be an infill between existing walls but with some addition in height to the two side walls. However, those walls comprise the party walls between adjoining former houses in the terrace, the back of a rear addition, and the nearest wall of the mews building which would have been closely associated with, but physically separated from, the original house. Although there has been infilling of the space at basement level, and this appears common along the terrace as far as was able to be seen from the appeal building, there remains a definite open space between the party walls and hence separating the former house from the mews building in a significant number of cases, and, save for the nearest example to the west, this feature and the common party wall height, extends along the rear of the terrace in an unbroken chain.
10. The introduction of the proposed infilling and the raising of the party wall would intrude into this unbroken chain, and would appear out of place and disruptive to the rhythm of the rear areas. More importantly, it would erode the historic separation of the former house and the mews building, and to an extent far more damaging than that already carried out at basement level, harming the significance of both historic buildings and failing to preserve the historic interest of the listed building. The proposal would therefore fail to accord with Development Plan policies which seek the preservation of listed buildings, and hence would not satisfy the requirements of sections 16(2) and 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
11. It is the case that the proposed infill would not be visible from the public realm, that is to say, streets, the mews court and the like. The Council pointed out the number of overlooking private viewpoints and that has been taken into account in the conclusion above with regard to the first floor extension. Being deeper within the gap between the terrace and the mews building, the number of these views diminishes with regard to the ground floor extension. Limited weight therefore can be afforded the effect on the conservation area as a whole, although that effect is nonetheless adverse.
12. Paragraphs 133 and 134 of the National Planning Policy Framework provide for two levels of harm, and in this case the harm to the listed building is considered to be less than substantial, with the harm to the conservation area being less within that consideration. The relevant paragraph 134 states that

where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

13. There are benefits to this hotel business in being able to let additional rooms, and Policy TACE2C states that outside certain areas extensions to existing hotels will be granted planning permission where these would, among other requirements, be of an appropriate scale to their surroundings and linked to the upgrading of the hotel. It has also been said that the ability of the hotel to contribute towards the Paddington Business Improvement District through an addition to the business rate would be improved. On this latter point it is clearly the case that additional income would assist in making this payment. Also clear from the presentation at the Hearing, was the role that the Paddington Business Improvement District plays in the economic wellbeing of the area and the support that this hotel business has given to those aims.
14. Nevertheless, in the terms of the Framework paragraph, the optimum viable use of the hotel, as a listed building, should not be taken as including the maximum number of rooms that can physically be developed. The benefits of the scheme are directly to the business, and only indirectly to the wider aims of the local economy, as the addition to the business rate is a fact once the required majorities of business voters, by number and by value, had been reached. Although the upgrading of hotels and the area as a whole is a worthy aim, and appears to be working, the preservation of heritage assets is of considerable public importance, backed by statutory requirements.
15. In the balance required by paragraph 134, it is concluded that the ground floor extension would cause significant, but less than substantial, harm to the historic and architectural significance of the listed building, and limited but real harm to the character and appearance of the conservation area, and that these levels of harm are not outweighed by the public benefits of the proposal. With regard to the permissive nature of the policy on extensions to hotels, the ground floor proposals would not be of an appropriate scale to their surroundings, whereas the first floor extension would be acceptable in that respect.

#### *Living Conditions*

16. In addition to the policy requirements on noise pollution, protecting amenities, daylight and sunlight previously stated, Policy TACE2C provides for extensions to be permitted where, among other matters, there would be no adverse effects on residential amenity.
17. There were some comments about the accuracy of the drawings, but the situation was clear at the site inspection with access being provided to both 15 and 17. In addition, the presence of windows on a boundary was questioned as this would not normally be expected under Building Regulations where the aim is to prevent the spread of fire from one property to another. However, the windows exist and it is reasonable to take account of them as being pre-existing openings.
18. Again, the Council do not object to the first floor extension in this respect and its position would be unlikely to cause undue additional noise and disturbance, or so adversely affect the outlook as to be unacceptable. Its effect on daylight

would be minimal as it would be at some distance and backed by the remainder of the high rear wall of the hotel. Regarding privacy, the window would give a high level place to overlook rear facing windows on the mews buildings and the Council's suggested condition would require the window to be obscure glazed and have a restricted opening. Whilst the appellant did not object to the situation that would result from this wording, the risk is through downward overlooking such that a scheme could be devised that would allow the room to have a view of sky and distant buildings whilst still not be the cause of harmful overlooking. For that reason the wording should be altered to provide for a scheme rather than an outright need for obscure glazing.

19. With regard to the proposed ground floor works, the neighbouring dwellings will be considered in number order;

- Number 15 is immediately to the east of the appeal site and has a single first floor window and the effect on daylight would not be a significant concern. The outlook would change but the proximity of the raised wall would not seriously affect the quality of the view. There may be the opportunity for some overlooking from that window into the hotel room, although the angle is steep and oblique, and conditions could control this risk. However, the proposal would bring a window to a ground floor bedroom in a position that could give rise to noise and disturbance and whilst the appellant is of the view that the management regime could address this, there would be a risk were the room to be occupied for a large number of short term visits, that any sanction applied would be after the event and not influence future behaviour as the guest would have moved on. Conditions could address this risk through the standard of the opening and of any mechanical ventilation then required. The occupier of the dwelling raises the matter of Human Rights and the right to the peaceful enjoyment of possessions and to family and private life. These are however not absolute rights but are qualified rights, and this consideration must be balanced against the rights and freedoms of others. That balance will form part of the Conclusions to this Decision.
- Number 16 backs directly onto the appeal site and has no windows, although there is a concern over noise and particularly during the building works. In this case the masonry construction of the party wall should be sufficient, with the lightwell and bathrooms providing a further buffer. Building work is transitory and the suggested condition on hours of construction would provide an adequate safeguard.
- Number 17 is immediately to the west of the appeal site and has three windows, one at ground floor in the dwelling is at high level there but at a low level relative to the accessible area of the neighbouring property on Sussex Gardens, and lights a kitchen continuous with the rear of the living room. Upstairs there are two windows to a bedroom. Whilst the appellant's daylight assessment shows no appreciable harm, the neighbour remains concerned as to the effect within the room, rather than at the plane of the window. The raised party wall would have some effect on the light reaching this window but having mind to the uninterrupted light in other directions, but also the enclosing effect of the terrace in any event, the difference in light would not be harmful in planning terms. However, it is clear that the occupier is concerned and this is an indication of the harmful effect on outlook, due to the already enclosed nature of that outlook, to which an

increased height of adjacent wall would appear particularly oppressive. The occupiers would be able to see the wall and new roof from the upper room windows, but it is not possible to conclude that this would cause real harm. Being further from the lightwell, the effect of noise would be less.

- Number 18 is further to the west and whilst the occupiers have written of their concerns over noise and disturbance and the effect on family members, the added distance from this proposal would render it acceptable. That occupier has also referred to their human rights and these qualified rights and the required balance will be considered in the Conclusions.

20. In conclusion, whilst access to daylight and sunlight is already curtailed due to the orientation of the Radnor Mews dwellings and the extent of built form already in place, and the proposed first floor room would not cause further harm due to its distance from those dwellings, the raised wall of the ground floor extension would impinge on the outlook from number 17 although the risk of noise and disturbance, as well as that of a loss of privacy to the new bedroom and to number 15 could be addressed with conditions. The aims of Policy TACE2C in safeguarding residential amenity would be met only in part.

### **Conditions**

21. These have been referred to in the Reasons where they could be used to make the development acceptable, with regard to preventing overlooking from the upper floor in particular and on hours of work. The Council Officers had suggested a number of other conditions when recommending the grant of permission and consent; to ensure that new work matched old work, the nature of walls, roofs and windows, and their colour; preventing the use of roofs for access; and for the listed building consent a condition to prevent disturbance to architectural features. These are reasonable and necessary in order to safeguard the listed building and the wider conservation area. In addition a condition is required to the planning permission listing the drawings for the avoidance of doubt and proper planning.

### **Conclusions**

22. The formation of the ground floor rooms, with the infilling of the space and the raising of the flank walls, would harm the architectural and historic interest of the listed building, and to a lesser extent the character and appearance of the conservation area. This harm, although less than substantial, would not be outweighed by the public benefits. With regard to the ground floor works, the raising of the flank walls would alter the outlook for two properties, although only the effect on number 17, having a lower window, would be unacceptable. The effect of the first floor extension would be acceptable in listed building and planning terms and conditions can ensure the standard of work and prevent harmful overlooking.

23. Whilst it is not necessary to consider human rights in relation to the ground floor work due to the decision to dismiss that part of the appeal, it is concluded in respect of the first floor works that the effect on neighbouring residents would not be disproportionate. For the reasons given above it is concluded that the appeals should each be allowed in part and dismissed in part.

*S J Papworth*  
INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Whitnall	Planning Officer City of Westminster Council
David Clegg	Design and Conservation Officer City of Westminster Council
Cllr Heather Acton	City of Westminster Council

### FOR THE APPELLANT:

Alan Gunne-Jones	Planning and Development Associates
Elspeth Clements	Clements Porter
Ciarán Treanor	Clements Porter
Christopher Peers	Paddington Business Improvement District
John Todd	Appellant

### INTERESTED PERSONS

Bernadette McKernan	Neighbouring resident
Emma Brookes	Neighbouring resident

### DOCUMENTS

Document	1	Daylight evidence submitted by appellant
Document	2	Drawing 857.108 submitted by appellant to replace 108A as agreed appeal drawing
Document	3	Committee report with conditions submitted by Council
Document	4	Response from Bernadette McKernan to Document 1
Document	5	Final comments from appellant re. Documents 1 and 4

### CONDITIONS

#### Appeal A, Planning permission

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 857.001, 003, 004, 005, 006, 007, 101A, 103A, 104A, 105A, 106A, 107A, 109A, 110A, 111, 112A, but only in as much as relates to the first floor extension.
- 3) No construction or fitting-out that can be heard at the boundary of the site shall be carried out other than between the hours of 0800 and 1800 Monday to Friday, 0800 and 1300 Saturday and shall not be carried out at all on Sundays and on Public and Bank Holidays.
- 4) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used on the adjacent existing building in terms of choice of material, method of construction and finished appearance.

- 5) The new sheer elevations of the extension hereby permitted shall be faced in smooth render which shall be painted and maintained in a white colour to match the colour of the existing render to the existing main building.
- 6) The new window shall be formed in glazing framed in white painted timber.
- 7) The roof of the rear extension hereby permitted must be faced in lead.
- 8) The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar accessible amenity area.
- 9) No development shall take place until a scheme for the glazing and opening of the rear facing window hereby permitted has been submitted to and approved in writing by the Local Planning Authority, to avoid overlooking of properties in Radnor Mews, and the development shall be carried out only in accordance with the approved scheme and details and shall be retained as approved thereafter.

#### Appeal B, Listed Building Consent

- 1) The works hereby authorised shall begin not later than three years from the date of this consent.
- 2) The materials to be used in the construction of the external surfaces, and internal surfaces where appropriate, of the extension hereby permitted shall match those used on the adjacent existing building in terms of choice of material, method of construction and finished appearance.
- 3) The new sheer elevations of the extension hereby permitted shall be faced in smooth render which shall be painted and maintained in a white colour to match the colour of the existing render to the existing main building.
- 4) The new window shall be formed in glazing framed in white painted timber.
- 5) The roof of the rear extension hereby permitted must be faced in lead.
- 6) No ornamental features, including chimney pieces, plasterwork, architraves, panelling, doors and staircases balustrades, are to be disturbed during the works other than provided for in this consent. All such features are to be protected for the duration of the works.



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