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CMS Cameron McKenna  
Nabarro Olswang LLP

[REDACTED]

Our ref: LBA-230-2118

27 October 2020

Dear [REDACTED]

## **DECISION NOTICE**

### **PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS)(SCOTLAND) ACT 1997**

**LISTED BUILDING CONSENT APPEAL: Refurbishment (external and internal), alteration and extension of principal former Royal High School buildings (to include works to north elevation to create new door openings and new corridor links), demolition of former lodge, gymnasium block, demolition of 2 curtilage buildings (former classroom block and luncheon hall), demolition of existing gates, wall (in part) to facilitate development of a world class hotel, at New Parliament House, 5-7 Regent Road, Edinburgh, EH7 5BL**

1. This letter contains Scottish Ministers' decision on the above listed building consent appeal (reference LBA-230-2118) submitted by Duddingston House Properties and Urbanist Hotels against the decision by the City of Edinburgh Council on the above-mentioned application.

2. The application for listed building consent (reference 17/00587/LBC) was made to the planning authority, the City of Edinburgh Council, on 13 February 2017, and refused by the Council on 7 September 2017. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2010 the appeal came into a class to be determined by a person appointed by Scottish Ministers, rather than by Scottish Ministers themselves. In exercise of the powers under paragraph 3(1) of Schedule 4 to the Act, Scottish Ministers directed, on 17 November 2017, that they would determine the case themselves. The reason given for the direction was that this appeal raises issues of national importance in terms of potential impacts on the historic

environment, including the Old and New Towns of Edinburgh World Heritage Site, and in relation to potential economic and tourism benefits.

3. The appeal was considered by means of inquiry and hearing sessions, which took place between 18 September and 23 October 2018 and were conducted by [REDACTED] BSc (Hons) Dip Arch RIBA IHBC and [REDACTED] MSc MRTPI, Reporters appointed by Scottish Ministers for that purpose.

4. The inquiry and hearing sessions conducted by the Reporters also related to a planning appeal (reference PPA-230-2213) for the same scheme ('Scheme 2'), and a planning permission appeal (reference PPA-230-2178) and a listed building consent appeal (reference LBA-230-2076) for a previous scheme ('Scheme 1').

5. The final reports with Reporters' recommendations were issued to Scottish Ministers on 2 June 2020. A copy of the Reporters' report on the listed building consent appeals ("the Report") is enclosed.

6. The appellants have made a claim for an award of expenses against Edinburgh World Heritage, and the Architectural Heritage Society of Scotland has made a claim for an award of expenses against the appellants. These claims are the subject of separate decisions issued by Scottish Ministers.

### **Reporters' Recommendation and Scottish Ministers' Decision**

7. The Reporters have recommended that the appeal be dismissed and listed building consent refused. For the reasons given below, Scottish Ministers accept the Reporters' conclusions and recommendation and adopt them for the purpose of their own decision. Scottish Ministers agree with the Reporters' recommendation and refuse listed building consent. All references to paragraph numbers, unless otherwise stated, are to the Report.

### **The Proposals and Site**

8. The appeal site is at New Parliament House, 5-7 Regent Road, Edinburgh. The 19th century building is more commonly known as the former Royal High School, and that name is used throughout this decision notice.

9. The former Royal High School is a category A listed building of international importance. It is prominently sited on the southern slope of Calton Hill, which is included in the national Inventory of Gardens and Designed Landscapes. The site is within the Old and New Towns of Edinburgh World Heritage Site, and the New Town Conservation Area. Across the road to the south of the site (and on the other side of the Waverley Valley) is the Old Town Conservation Area. Calton Hill has evolved as a highly significant cultural place in Edinburgh, containing the National Monument, Nelson's Monument and other notable structures.

10. In addition to the main school building, the listing includes the lodge, classroom block, retaining/boundary walls, gateposts and railings.

## The Proposed Works ('Scheme 2')

11. The proposed works are to facilitate the development of a “world class hotel”, and include the total demolition of some of the buildings within the site including the listed lodge, gymnasium block, classroom block and luncheon hall. Alterations to the remaining buildings, the retaining walls, boundary walls, gateposts and railings are also proposed. The main building (referred to as the Hamilton building, after its architect Thomas Hamilton) would be altered internally and externally.

## **The Reporters' Report**

12. The Report is in three parts: Part 1 covers the relevant statutory duties and issues common to both appeals (related to Scheme 1 and Scheme 2). The Reporters' conclusions in Part 2 (regarding the Scheme 1 appeal specifically and not relevant to this decision) and Part 3 (related to Scheme 2) are informed by their conclusions at Part 1.

## **Legal and policy context and determining issues**

13. Listed building consent applications and appeals are governed by the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ('the Listed Buildings Act') as amended. The relevant section in the Act requires that the Scottish Ministers have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest it possesses. For conservation areas, the Act requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

14. Scottish Ministers agree with the Reporters' summary of relevant elements of National Planning Framework 3 (NPF 3) and Scottish Planning Policy in paragraphs 1.3 – 1.7.

15. The Reporters identify relevant content of the Historic Environment Policy for Scotland 2019 (HEPS), and Historic Environment Scotland's Interim Guidance on the Principles of Listed Building Consent; Managing Change in the Historic Environment series; designation policy and selection guidance. Scottish Ministers agree that these are relevant to the consideration of this appeal.

16. The Reporters also discuss the status of the Old and New Towns of Edinburgh as a World Heritage Site, and the associated obligations under the World Heritage Convention.

17. Section 25 of the Town and Country Planning (Scotland) Act 1997 does not apply to consideration of an application for listed building consent. The Reporters note that the Council's reasons for refusal in each of the listed building appeals refer to relevant development plan policies. Scottish Ministers share the Reporters' opinion that these policies add nothing of significance beyond the statutory duties, national policies and guidance set out in Chapter 1 of the Report.

## Summary of Reporters' findings

18. Scottish Ministers agree with the Reporters' findings and conclusions regarding the special interest of the listed building; the setting of the listed building and the New Town Conservation Area (in Chapters 3, 4 and 5 respectively).

19. Ministers agree with the Reporters (paragraph 14.1) that the main issues in this appeal are the impacts of the proposed works, including demolition, on the special architectural and historic interest of the listed building; on its setting; and on the setting of other listed buildings. Ministers agree that (paragraph 14.1) in the event that the Scottish Ministers find harm, it is also necessary to consider whether there are other options which might secure a beneficial future with less harm and any wider benefits that might stem from consent. Ministers agree that (paragraph 14.1) other relevant issues include the impact of the proposed works on the New Town Conservation Area and on the Old and New Towns of Edinburgh World Heritage Site.

20. The Reporters state (paragraph 14.8) that the proposed development would help to preserve the listed building by a sympathetic repair and restoration of the fabric of the building. The outside of the main Hamilton building together with the majority of the boundary walls and railings would be brought into good condition. The proposed use would involve substantial alterations to some of the internal fabric but would re-use the main spaces for public areas. Proposed internal alterations would be sensitively done to protect adjacent fabric and minimise loss of the original. These impacts alone would amount to preservation by repair, protection and beneficial re-use of the listed building. The Reporters state this must carry substantial weight in favour of the proposed new uses. Scottish Ministers agree with these findings of the Reporters.

21. The Reporters note (paragraph 14.11) that the appellants accept the primacy of the southern elevation of the principal listed building, and the importance of the oblique views in the understanding and appreciation of this building. Scottish Ministers agree with the Reporters that these views would inevitably be significantly compromised by the addition of large-scale wings to each side, however the wings are cloaked.

22. Scottish Ministers agree with the Reporters (paragraph 14.12) that the Proposed Development would have considerable impacts on the setting of the listed building, and that the prominence and dominance of the building in certain views would be spoiled by the overwhelming scale of the extensions proposed. Scottish Ministers also agree with the Reporters (paragraph 14.15) that the proposed extensions would appear overbearing, urbanising and out of context, and be a distraction in significant views of the principal Hamilton building and harmful to its setting.

23. Ministers agree with the Reporters (paragraph 14.16) that little weight should be attached to the fact that in theory the works could be reversed.

24. Scottish Ministers acknowledge that the Reporters refer (in paragraph 14.9 of the Report) to paragraph 15 of Historic Environment Scotland's *Interim Guidance on*

*the Principles for Listed Building Consent* ('the HES Interim Guidance'). That paragraph states:

- 15. Where a proposal involves alteration or adaptation which will have an adverse or significantly adverse impact on the special interest of the building, planning authorities, in reaching decisions should consider carefully:*
- a. the relative importance of the special interest of the building; and*
  - b. the scale of the impact of the proposals on that special interest; and*
  - c. whether there are other options which would ensure a continuing beneficial use for the building with less impact on its special interest; and*
  - d. whether there are significant benefits for economic growth or the wider community which justify a departure from the presumption set out in paragraph 8.*

25. The Reporters state at paragraph 14.9 that "Failure to meet any one of the criteria [listed in paragraph 15] could be grounds to conclude that the presumption against works which adversely affect the special interest of the listed building or its setting should not be departed from". However, Scottish Ministers interpret this paragraph as setting out four considerations for decision-making, rather than four 'criteria' which should all be satisfied.

#### *Other options*

26. Scottish Ministers agree with the Reporters (para 6.8) that an alternative proposal can be considered an option (in terms of point c of Paragraph 15 of the HES Interim Guidance) if it is shown to be viable, technically feasible and has (or would be likely to get) consent.

27. The Reporters discuss (at paragraphs 6.6 - 6.7 and 14.18 - 14.25) a scheme by the Royal High School Preservation Trust (RHSPT) to redevelop the listed building and its site as a music school. The Reporters state at paragraph 9.18 that the RHSPT proposal has planning permission and listed building consent, although some details remain to be resolved. Scottish Ministers understand that the RHSPT is unable to implement its proposal at this time as the appellants have effective control of the site. Ministers also understand that the listed building consent for the RHSPT scheme (Council reference 15/05665/LBC) has now expired, but the planning permission (Council reference 15/05662/FUL) remains extant. The previous grant of listed building consent for the scheme indicates to Scottish Ministers that the proposal would be likely to gain consent again. Ministers agree with the Reporters (paragraph 14.18) that there is no reason why the RHSPT scheme would not be a viable and achievable alternative to the appeal proposals.

28. Scottish Ministers agree with the Reporters' assessment of the RHSPT scheme as set out in paragraphs 14.18 – 14.25. Scottish Ministers also agree with the Reporters (paragraph 14.23) that whichever option (i.e. the RHSPT scheme or the hotel Scheme 2) were to be established the original pattern of use would be further lost to the new arrangement, and therefore that less significance should be attributed to the internal alterations. Ministers agree with the Reporters (paragraph 14.23) that the appeal proposal would better preserve the listed building itself, given

that it would involve considerably less removal of original fabric of the principal building than the RHSPT scheme would. However, Ministers also agree with the Reporters that the proposed hotel wings would have a much greater impact (than the RHSPT scheme) on the setting of the listed building. On balance, Ministers consider that the RHSPT scheme represents an option which would likely, if implemented, ensure a continuing beneficial use for the building with less impact (than that of the works proposed in this appeal) on its special interest.

29. Scottish Ministers consider that even if no option had been identified that would ensure a continuing beneficial use for the building with less impact on its special interest, the absence of any such option would not justify a departure from the presumption against works which adversely affect the special interest in this case, given the scale of the adverse impact that would be caused by the works proposed in this appeal.

30. Scottish Ministers agree with the Reporters (paragraph 14.28) that the economic and tourism benefits of the proposed development would be at least regionally significant. However, Scottish Ministers also agree with the Reporters that limited weight should be placed on the proposal to define the particular quality or level of service at the hotel, and that the benefit of the proposed hotel to the economy should not therefore be determined on the ambitions for a world-class hotel.

31. The Reporters find that the proposed works would be a radical intervention in a sensitive part of the New Town Conservation Area, and would appear as two major extensions out of keeping with the character of the principal school building and its prominent setting. Ministers agree with the Reporters that (paragraph 14.32) the character and appearance of the conservation area would be neither preserved nor enhanced by what is proposed.

32. Ministers have taken into account all of the submitted evidence regarding impacts on the Old and New Towns of Edinburgh World Heritage Site ('the WHS').

33. Ministers acknowledge that the ICOMOS (International Council on Monuments and Sites) Guidance on Heritage Impact Assessments for Cultural World Heritage Properties states (on page 1) that "World Heritage properties need to be seen as single entities that manifest OUV [Outstanding Universal Value]. Their OUV is reflected in a range of attributes, and in order to sustain OUV it is those attributes that need to be protected."

34. In relation to the attributes of the WHS, Ministers acknowledge that the Statement of Outstanding Universal Value (SOUV) states that "[the] contrast between the organic medieval Old Town and the planned Georgian New Town...provides a clarity of urban structure unrivalled in Europe." It also states that the juxtaposition of these two distinctive landscapes, each of exceptional historic and architectural interest, creates the outstanding urban landscape. Ministers agree with the evidence of Historic Environment Scotland (HES) that the site of the Royal High School is located at one of the most visible and marked juxtapositions between the Old and the New Town, at the junction of the two Conservation Areas, midway up Calton Hill above the Waverley valley.

35. Ministers also agree with HES that the former Royal High School is a key building within the WHS, and is one of the finest public and commercial monuments of the neo-classical revival in Europe as mentioned in the SOUV.

36. The SOUV states that the successive planned extensions of the New Town, and the high quality of its architecture, set standards for Scotland and beyond, and exerted a major influence on the development of urban architecture and town planning throughout Europe, in the 18th and 19th centuries. Ministers agree with HES that the former Royal High School is a key component of one of these planned extensions - the Calton Scheme, a major expansion of the city to the east.

37. Ministers agree with HES that the proposed works would result in considerable damage to the setting of one of the most important neo-classical buildings in the city, removing its current prominence and current domination of its carefully conceived and planned site, reducing it to a subordinate structure set between the new hotel wings which would become dominant features of Calton Hill's southern slope.

38. Given the above, Scottish Ministers consider that the proposed works would cause harm to the qualities which justified the inscription of the World Heritage Site.

### **Overall conclusions**

39. Scottish Ministers accept the Reporters' conclusions set out in Chapter 16. Ministers agree with the Reporters (paragraph 16.8) that the proposed works would not preserve the listed building or its setting and neither preserve nor enhance the character and appearance of the Edinburgh New Town Conservation Area.

40. In reaching this decision, Ministers have had special regard to the desirability of preserving the listed building or its setting, and paid special attention to the desirability of preserving or enhancing the character or appearance of the New Town Conservation Area, in accordance with Sections 14(2), 59(1) and 64 of the Listed Buildings Act.

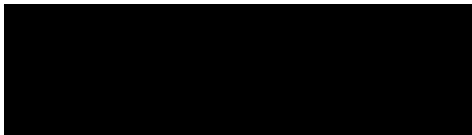
41. Accordingly, for the reasons set out in the Reporters' report and as summarised above, Scottish Ministers hereby dismiss the appeal and refuse listed building consent for refurbishment (external and internal), alteration and extension of principal former Royal High School buildings (to include works to north elevation to create new door openings and new corridor links), demolition of former Lodge, Gymnasium Block, demolition of 2 curtilage buildings (former Classroom Block and Luncheon Hall), demolition of existing gates, wall (in part) to facilitate development of a world class hotel, at New Parliament House, 5-7 Regent Road, Edinburgh, EH7 5BL

42. This decision of Scottish Ministers is final, subject to the right conferred by section 58 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's

interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

43. A copy of this letter and the Reporters' report has been sent to the representatives of The City of Edinburgh Council; Historic Environment Scotland; The New Town and Broughton Community Council; The Architectural Heritage Society Of Scotland; Edinburgh World Heritage; The Cockburn Association; The Royal High School Preservation Trust; and The Regent, Royal and Carlton Terraces and Mews Association. Those parties who lodged representations will also be informed of the decision.

Yours sincerely

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**Chief Planner**