

Date: **09/01/2025**  
Your refs: **APP/X5210/W/24/3355915 & APP/X5210/24/3357298**  
Our refs: **2024/3999/P & 2024/3977/L**  
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Dear Alison Kendall,

**Appeal by Mr Michael Ruse**  
**Site: 32 Warren Street, London, W1T 5PG**

**Appeal against refusal of planning permission and listed building consent dated 12<sup>th</sup> November 2024 for:**

**Proposal:**

Planning Permission (2024/3999/P) – *Change of use from clinic/office (Class E) to residential (Class C3) at basement and ground floor levels.*

Listed Building Consent (2024/3977/L) – *Minor alterations to internal floorplan to facilitate the change of use from clinic/office (Class E) to residential (Class C3) at basement and ground floor levels.*

Planning Permission was refused on the following grounds:

1. *The proposed development involves the loss of an existing viable business use contrary to Policy E2 (Employment premises and sites) of the Camden Local Plan 2017 and Principle 4 (Small and Medium Enterprises) of the Fitzrovia Area Action Plan.*
2. *The proposed development, in the absence of an Air Quality Assessment, has failed to demonstrate that future occupants would not be exposed to unacceptable levels of air pollution and subsequently that the site is suitable for residential use, contrary to Policy CC4 (Air quality) of the Camden Local Plan 2017.*
3. *The proposed development, in the absence of a legal agreement securing car-free housing, would contribute to parking stress and congestion in the surrounding area and*

*fail to promote more sustainable and efficient forms of transport and active lifestyles, contrary to Policies T2 (Parking and car-free development) and DM1 (Delivery and monitoring) of the Camden Local Plan 2017.*

Listed Building Consent was refused on the following ground:

1. *The proposed changes to the internal plan form at ground floor level and lack of detail of the proposed servicing, would have a detrimental impact on the special architectural and historic interest of the Grade II listed host building, contrary to Policy D2 (Heritage) of the Camden Local Plan 2017.*

## **1. Summary**

### *Site and Designations*

- 1.1. The subject site comprises a mid-block terraced building located on the south side of Warren Street, between Conway Street to the east and Cleveland Street to the west. It is also immediately adjacent to the entrance of Warren Mews, which it gains rear access from.
- 1.2. The building is Grade II listed (part of the listing of nos. 30-34 Warren Street) and located within the Fitzroy Square Conservation Area to which it makes a positive contribution to. As a listed building its significance derives from it being a late 18<sup>th</sup> century house, its architectural design and elevational hierarchy, its contribution to the setting of the wider listed group, the internal planform, and surviving historic fabric. The mid-19<sup>th</sup> century shopfront also contributes to the building's special interest.
- 1.3. The Council's case is set out in detail in the attached Officer's Delegated Report, and it will be relied on as the principal Statement of Case. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire. In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

## **2. Status of Policies and Guidance**

- 2.1. The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on 03/07/2017 as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reason for refusal are:

*G1 – Delivery and location of growth*

*H1 – Maximising housing supply*

*H6 – Housing Choice and Mix*

*H7 – Large and Small Homes*

*E2 – Employment Sites and Premises*

*A1 – Managing the impact of development*

*D1 – Design*

*D2 – Heritage*

*T1 – Prioritising walking, cycling, and public transport*

*T2 – Parking and car-free development*

*CC4 – Air Quality*

*DM1 – Delivery and monitoring*

- 2.2. The Council also refers to supporting guidance documents. The Camden Planning Guidance (CPG) was adopted following the adoption of the Camden Local Plan in 2017. There have been no changes to the relevant policies since the applications were refused. However, it should be noted that a new version of the National Planning Policy Framework was published in December 2024. It is however considered that these changes to the NPPF do not impact on the assessment of this application.
- 2.3. Additional relevant policy and guidance includes the Fitzrovia Area Action Plan (2012) and the Fitzroy Square Conservation Area Appraisal and Management Strategy (2010).
- 2.4. It should also be noted that the Council has since published a draft New Local Plan, which is currently out for consultation. Little weight can be afforded to the new plan as it is at draft stage. It is not envisaged that there would be any material differences between the existing and new plan in relation to this appeal.
- 2.5. It is also not considered that there are material differences between the NPPF 2023 and 2024, The London Plan and the Local Plan in relation this appeal.

### **3. Comments on Grounds of Appeal**

- 3.1. The appellant's statement is set out in a response document prepared by the appellant, Mr Michael Ruse (dated 20 November 2024) and includes a point-by-point response to each of the planning and listed building reasons for refusal. An air quality map and reading (from iqair.com, dated 20 November 2024) and an annotated existing ground floor plan are included at the end of the document.
- 3.2. Each of the four reasons for refusal are addressed. The Council's comments on the ground for appeal will be addressed in the same manner below.

#### **Reason for Refusal 1 (Planning Permission)**

- 3.3. The first reason for refusal states the proposed development involves the loss of an existing viable business contrary to Policy E2 (Employment premises and sites) of the Camden Local Plan 2017 and Principle 4 (Small and Medium Enterprises) of the Fitzrovia Area Action Plan.
- 3.4. Many of the items raised in the appellant's response document for this reason for refusal are outlined in Section 3 (Land Use) of the Delegated Officer Report. However, the appellant further claims that "*there is no viable business use*". The information provided as part of the response document is the same as what was provided at application stage, with the appellant stating that the existing ground floor unit is tenanted on a month-to-month basis and at a reduced rate, and that there is an "*very unlikely prospect of finding a reliable new tenant*".
- 3.5. The appellant further states that they have "*spoken to local agents*" and that they have been advised the ground floor unit would be "*extremely difficult to let*" due to low demand for a small office space like the subject site.
- 3.6. The appellant further argues that Principle 1 of the Fitzrovia Area Action Plan was ignored. Principle 1 states that "*The Council will promote the development in Fitzrovia of permanent self-contained housing (in Use Class C3) unless there are strong economic reasons why such development would be inappropriate.*"

- 3.7. Local Plan Policy E2 resists development of businesses premises and sites for non-business use unless it can be demonstrated that the site is no longer suitable for its business use and that the possibility of retaining, reusing or redeveloping the site for a similar or alternative type and size of business has been fully explored over an appropriate period of time. Principle 4 of the Fitzrovia Area Action Plan (FAAP) aims to support small and medium enterprises (SMEs) by seeking to ensure that existing business premises suitable for SME use are retained. CPG Employment Sites and Business Premises.
- 3.8. In this case, the ground floor is currently occupied by a medical clinic and the basement level utilised by the property owner as their own professional offices; both levels are currently occupied. The applicant has submitted a document outlining the tenant history of the site dating back to 2009, as well as information suggesting that the ground floor tenant, who has been in the unit since 2014 on a month-to-month basis, is paying significantly below market rates for the unit. This statement is supplemented by excerpts from the Valuation Office Agency (VOA) website outlining the market rates for the basement and ground floor units. The documents also suggest that there is no demand for small office/business spaces in the area based on the current market value, and that there are limitations to the internal floorplan for future tenants due to the building's Grade II listed status.
- 3.9. The Council will require evidence of a marketing exercise to support an application involving the loss of employment uses, in line with Policy E2. As a minimum, it is expected a marketing exercise include the following:
- *Use of a local or national agent with a track record of letting employment space in the borough;*
  - *A visible letting board on the property (constant throughout the marketing period);*
  - *Marketing material should be published on the internet, including local or specialist channels;*
  - *Continuous marketing over at least 2 years from when the letting board is erected and the property advertised online to the date of the submission of the planning application;*
  - *Advertised rents should be reasonable, reflecting market rents in the local area and the condition of the property;*
  - *Lease terms should be attractive to the market;*
  - *A commentary on the number of details of enquiries received, such as the number of viewings and the advertised rent at the time, including any details of why the interest was not pursued; and*
  - *Where there is an existing employment use then we will require evidence that the tenant intends to move out.*
- 3.10. The evidence provided is considered to be insufficient and incomplete, and simply does not satisfactorily meet any of the above criteria to support the loss of Class E floorspace.
- 3.11. The Council refutes the statement that Principle 1 of the Fitzrovia Area Action Plan was ignored. We consider that the proposal is not compliant with Principle 1, as there is a strong economic reason why the development would be inappropriate – the lack of comprehensive and satisfactory marketing evidence which supports the change of use to residential.

- 3.12. This is further supported by Local Plan policy G1, which outlines that the Council is not supportive of housing at any cost and requires development to take account of various factors including quality of design, its surroundings, amenity, heritage and any other considerations relevant to the site.
- 3.13. Policy H1 of the Local Plan states that the Council will make housing its top priority when considering the future of underused land and buildings. Although housing is the Council's priority land use, residential accommodation could only be supported on this site subject to policy compliance in all other respects, particularly by the submission of satisfactory evidence that the existing use is no longer viable.
- 3.14. In summary, the development has unsatisfactorily demonstrated that the existing Class E use is not viable, contrary to policy E2 of the Local Plan and Principle 4 of the Fitzrovia Area Action Plan.

### **Reason for Refusal 2 (Planning Permission)**

- 3.15. The second reason for refusal relates the absence of an Air Quality Assessment, which has failed to demonstrate that future occupants would not be exposed to unacceptable levels of air pollution and subsequently that the site is suitable for residential use, contrary to policy CC4 of the Local Plan and CPG Air Quality.
- 3.16. The appellant argues there is considerable existing residential occupancy in the area, and that there is no through vehicular traffic along Warren Street. A printout from the website iqair.com (dated 20 November 2024) was provided indicating the air quality near the site (at Whitfield Nursery Playground, approximately 476m southeast from the site) was identified as 'good'.
- 3.17. The Council has identified Euston Road as an area of poor air quality, which includes a buffer area to the north and south of the highway. The subject site is located within that buffer, which triggers the requirement for an air quality assessment to be provided as part of any development proposal which proposes new residential accommodation. The existence of existing residential accommodation in the area does not waive the requirement for an air quality assessment, nor is a website printout from a third-party site sufficient to demonstrate policy and CPG compliance.
- 3.18. In summary, the development is considered not to satisfactorily demonstrate that future occupants would not be exposed to unacceptable levels of air pollution, contrary to policy CC4 of the Local Plan and CPG Air Quality.

### **Reason for Refusal 3 (Planning Permission)**

- 3.19. The third reason for refusal relates to the lack of S.106 agreement to secure the new dwelling as car-free housing. The appellant has advised that if a S.106 agreement is sought, this should be included as a condition. Full justification for the S.106 agreement requirement is set out below in Section 6, following suggested conditions, should the appeal be allowed.
- 3.20. The Council's lawyer is liaising with the appellant regarding completion of a S.106 agreement and PINS will be updated at final comments stage.

### Reason for Refusal 1 (Listed Building Consent)

- 3.21. The only reason for refusal under the parallel listed building consent application states that the proposed changes to the internal planform at ground floor level and lack of details of the proposed servicing would have a detrimental impact on the special architectural and historic interest of the Grade II listed host building, contrary to policy D2 of the Local Plan.
- 3.22. The appellant argues that para 5.8 of the Delegated Officer Report is misleading as there is no existing spine wall to be removed that would result in harm to the host building. For an avoidance of doubt, the spine wall to be removed is circled in the proposed ground floor plan below.

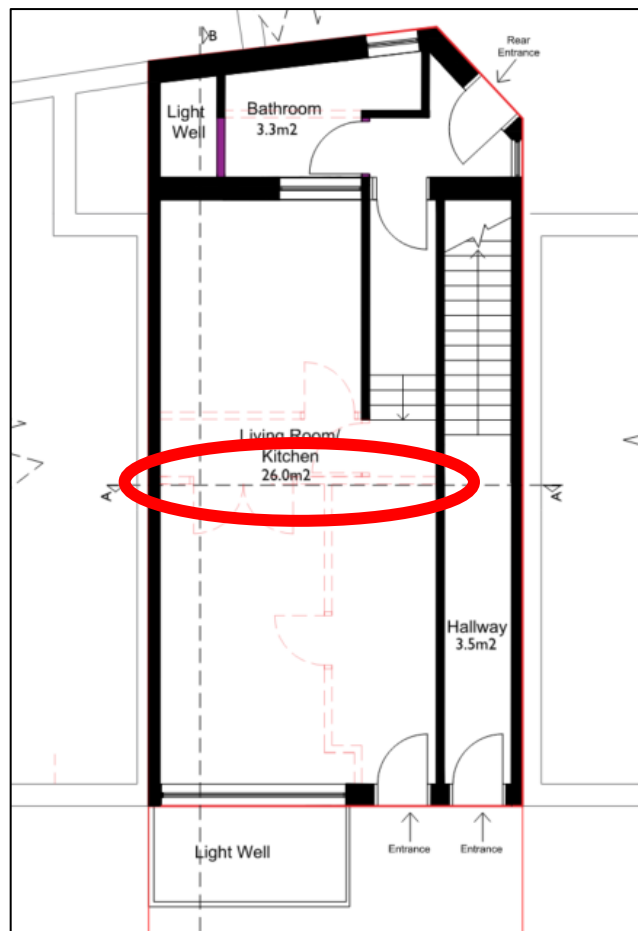


Fig 1. Proposed Ground Floor Plan

- 3.23. The appellant states that the removal of the wall leading to the rear room plus the two partitions (one with swinging doors) enclosing the front room will return the ground floor to the original planform.
- 3.24. The Council considers the removal of the internal wall highlighted above to result in harm to the original planform of the Grade II listed building. Buildings of this age did not feature historic open-plan ground floors and would typically consist of a front room and a rear room separated by a wall and some sort of opening (sometimes with doors). Thus, removal of the internal wall would harm the historic planform of the Grade II listed building, contrary to policy D2 of the Local Plan.

- 3.25. The appellant further responds to the second part of the listed building consent reason for refusal, stating that *“there is electricity, a sink with hot and cold water and a large traditional sash window in the rear surgery. The kitchen when chosen should incorporate a venting hob with a built-in extractor”*. This statement is considered insufficient and incomplete to demonstrate how the new kitchen would be serviced including level of demolition, and amount of loss of historic fabric required to facilitate its installation.
- 3.26. When considering whether to grant listed building consent for any works, Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“LBCA Act”) the council must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 66 of the LBCA Act also sets out that when considering planning applications, special regard must be given to the preservation of a listed building, its setting or its features of special architectural or historic interest. Both are relevant to the proposal.
- 3.27. Paragraph 208 of the NPPF states *‘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, where appropriate, securing its optimum viable use’*.
- 3.28. Considerable weight and importance should be given to that harm, and it should be outweighed in the balance by considerable public benefits. The matter of harm arising from internal plan form changes, considered less than substantial harm to the special interest of the listed building, cannot be justified as there are no public benefits of a nature adequate to outweigh the level of harm caused, including the provision of one 2-bedroom residential unit.
- 3.29. In summary, the works are considered to result in less than substantial harm to the special interest of the Grade II listed building contrary to policy D2 of the Local Plan. There are public benefits to the scheme, but these do not outweigh the harm identified.

#### **4. Conclusion**

- 4.1. Based on the information set out above and having taken account of all the additional evidence and arguments made, it is considered that the proposal remains unacceptable for reasons set out within the original decision notice. The information submitted by the appellant in support of the appeal does not overcome or address the Council’s concerns.
- 4.2. The Council’s position on the harm of the proposed garden dwelling is clearly outlined in the Officer’s Delegated Report. As per the tests in the NPPF, the identified harm needs to be balanced against any public benefits to the scheme, which are considered negligible in this instance.

#### **5. Suggested conditions should the appeal be allowed.**

- 5.1. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 5.2. The development hereby permitted shall be carried out in accordance with the following approved plans:

32WarrenSt\_PlansAndElevation\_V6, 32WarrenSt\_LocationPlan\_V5, 32WarrenSt\_ExistingBlockPlan\_V5, 32WarrenSt\_ProposedBlockPlan\_V5, 32WarrenSt\_Photos\_V5, Design Access and Planning Statement (prepared by Homz, dated 16/09/2024), Heritage Statement (prepared by Mick Ruse, dated 10/09/2024), Property History Description (prepared by Mick Ruse, dated 31/07/2024), Rent Evidence Confirming Lack of Market Demand (prepared by Mick Ruse, dated 21/08/2024), Recent History of the Commercial Premises (unknown author, not dated)

Reason: For the avoidance of doubt and in the interest of proper planning.

- 5.3. The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policies CC1, CC2, CC3 of the London Borough of Camden Local Plan 2017

## **6. Justification for car-free S.106 should the appeal be allowed.**

- 6.1. As outlined within the Officer Delegated Refusal Report, Policy T2 limits the availability of parking in the borough and requires all new developments in the borough to be car-free. The new units would be car-free to limit the availability of both off-street and on-street parking. A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where an additional dwelling/use needed to be designated as car-free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car-Free" legal obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car-Free", and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free".
- 6.2. The use of a legal agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal a potential future purchaser(s) of the property that it is designated as car-free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.



6.3. The car-free requirements comply with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

If any further clarification of the appeal submissions is required, please do not hesitate to contact Daren Zuk on the above direct dial number or email address.

Yours sincerely,

Daren Zuk  
Principal Planning Officer