



## Appeal Decisions

Site visit made on 8 April 2025

**by Mr R Walker BA HONS DIPTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2025

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### **Appeal A Ref: APP/X5210/W/24/3355915**

#### **32 Warren Street, London W1T 5PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Michael Ruse against the decision of the Council of the London Borough of Camden.
- The application Ref is 2024/3999/P.
- The development proposed is change of use from clinic/office (Class E) to residential (Class C3) at basement and ground floor levels.

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### **Appeal B Ref: APP/X5210/Y/24/3357298**

#### **32 Warren Street, London W1T 5PG**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
- The appeal is made by Mr Michael Ruse against the decision of the Council of the London Borough of Camden.
- The application Ref is 2024/3977/L.
- The works proposed are 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.

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### **Decision**

1. **Appeal A:** The appeal is dismissed.
2. **Appeal B:** The appeal is dismissed.

### **Preliminary Matters**

3. These decisions address both planning and listed building consent appeals for the same site and the same scheme. To reduce repetition, and for the avoidance of doubt, I have dealt with both appeals together within a single decision letter, using the descriptions from the Council's decision notices. These accurately and succinctly describe the extent of development/works.
4. As the scheme relates to a listed building and is in a Conservation Area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). The Council's decision notice for the refusal to grant listed building consent includes a single reason for refusal relating to concerns over the internal works. This reason for refusal does not appear on the Council's refusal to grant planning permission. However, as these internal alterations also form part of the proposed development to change the use and considering my statutory duty under section 66(1) of the Act, I have considered this main issue for both appeals. As both parties have addressed this matter within their evidence, their interests have not been prejudiced by my consideration of the appeal in this manner.

## Main Issues

5. Accordingly, the main issues are:

- Whether sufficient evidence has been provided to justify the permanent loss of employment premises; (Appeal A)
- The effect of the proposal on the living conditions of future occupants of the proposed development with particular reference to air quality; (Appeal A)
- Whether the proposal would promote sustainable means of transport and the effect of the proposal on the availability of on-street parking; (Appeal A) and
- Whether the proposal would preserve the Grade II listed building, known as Numbers 30-34 and attached railings, or any features of special architectural or historic interest which it possesses. (Both appeals)

## Reasons

### *Loss of business floorspace (Appeal A)*

6. The appeal site is located along Warren Street, which is characterised by a mix of commercial and residential properties. The ground floor of the appeal premises is used as a health clinic and an office is in the basement floor level. The appellant has confirmed that the operators of the health clinic intend to relocate due to a downturn in business and the appellant's need for the office is also ceasing.
7. I have no reason to question that the premises are no longer required for the existing businesses operating on the site. However, Policy E2 of the Council's Local Plan (LP) says, amongst other things, that the Council will resist development of business premises and sites for non-business use unless it is demonstrated to the Council's satisfaction that the possibility of retaining, reusing or redeveloping the site or building for similar or alternative type and size of business use has been fully explored over an appropriate period of time.
8. The supporting text for the policy says that in order to satisfy the requirements of this policy the applicant must submit evidence of a thorough marketing exercise, sustained over at least two years. Whilst the appellant has provided a copy of an agent letter setting out their view regarding the market for the premises, there is no evidence of a thorough marketing exercise as set out in the supporting text of Policy E2 to test the current market conditions.
9. This should, as set out in the supporting text, include a consideration of alternative business uses and layouts and marketing strategies, including management of the space by specialist third party providers. Such a level of evidence is not before me and the size of the space, the previous steps taken to secure a user, characteristics of the street, or neighbouring permissions do not justify a departure from this requirement to robustly test the market.
10. I have been referred to Principle 1 of the Fitzrovia Area Action Plan (AAP), which promotes permanent self contained housing unless there are strong economic reasons why such development would be inappropriate. However, this principle needs to be read with the development plan as a whole. This also includes Principle 4 of the AAP, which seeks to support small and medium enterprises

(SMEs) by seeking to ensure that where appropriate existing business premises suitable for SME use are retained.

11. I therefore find that insufficient evidence has been provided to justify the permanent loss of employment premises. Accordingly, I find conflict with the requirements of Policy E2 of the LP and Principle 4 of the AAP, when taken together and in so far as they relate to this main issue.

#### *Air Quality (Appeal A)*

12. Euston Road has been identified by the Council as having poor air quality with a buffer included to the north and south, which includes the appeal site. The appellant has provided a reading from an online source where the air quality was good. However, this reading is a snapshot in time and is located near but further south from Euston Road than the appeal site. In this regard, I have no substantive evidence to dispute the Council's position regarding the poor air quality generally experienced along, and either side of, Euston Road.
13. The presence of existing residential properties within the area, or the planting within Warren Mews, does not provide firm evidence of air quality, justify exposing new occupiers to poor air quality, or outweigh the status of the Development Plan and its requirements for the consideration of this issue in a manner proportionate with the scale of development. Accordingly, in the absence of any firm evidence, I am unable to conclude that the proposal would not have a harmful effect on the living conditions of future occupiers of the proposed development with particular reference to air quality.
14. Accordingly, the proposal would conflict with the requirements of Policy CC4 of the LP. This says, amongst other things, that the Council will take into account the impact of air quality when assessing development proposals, through the consideration of both the exposure of occupants to air pollution and the effect of the development on air quality. It goes on to say that Air Quality Assessments are required where development is likely to expose residents to high levels of air pollution.

#### *Parking (Appeal A)*

15. The appeal site is located within a Controlled Parking Zone where the Council has identified significant parking pressure. The appellant indicates that there is no great pressure on parking nearby and there is an electric charging space that is often available. However, no substantive evidence has been provided to demonstrate the levels of parking stress. The proposal would increase the number of residents in the area, exacerbating parking pressure if future occupiers owned cars.
16. Policy T2 of the LP says, amongst other things, that all new developments will be car free. It is explained in the supporting text for the Policy that car-free development means that no car parking spaces are provided within the site other than in specific circumstances and, additionally, occupiers are not issued with on-street parking permits. The policy stipulates that the Council will make use of legal agreements to ensure future occupants are aware they are not entitled to parking permits. Given the location of the appeal site and its strong public transport connections a scheme that does not have controls secured around car free development would not promote sustainable means of transport.

17. The judgements in *Westminster CC v SSCL & Acons* [2013] EWHC 690 (Admin) and *R (oao Khodari) v Kensington and Chelsea & Cedarpark Holdings Inc* [2017] EWCA Civ 333 highlight the difficulties in wording obligations to directly restrict the use of 'the land' to this end. However, it is not impossible to draft an obligation to restrict the holding of permits by occupants. In the absence of any form of obligation before me I am unable to assess whether its wording would be directly linked to the land.
18. The appellant also suggested that if a legal agreement is sought it could be required by a condition. However, Planning practice guidance<sup>1</sup> states that in exceptional circumstances negatively worded conditions requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. As there are no such exceptional circumstances in this case, the most appropriate mechanism to secure car-free development would be through an appropriately worded planning obligation.
19. To conclude on this main issue, the proposal would not promote sustainable means of transport and would have a harmful effect on the availability of on-street parking. As such, the proposal would be contrary to the requirements of Policies T2 and DM1 of the LP, when taken together and in so far as they relate to this matter. These say, amongst other things, that the Council will limit the availability of parking and require all new developments in the borough to be car free.

*Listed building (both appeals)*

20. The appeal premises forms part of a row of four storey brick built terraced houses that date to around 1788-98. No 32 was adapted during the 19<sup>th</sup> century to include a shop front. There are variations between the properties in the listed building, particularly with the ground floor shop fronts. Nonetheless, the broad consistency of height, materials, brick to void ratio, and upper floor windows results in a cohesive appearance. The consistency within the terrace, its height and simple unornamented upper floors to the front façade combined with the railings to the front give the listed building a dignified appearance.
21. In so far as it is relevant to these appeals the special interest and significance of the listed building resides in its terraced design, detailing and layout, within which repetition and uniformity are defining original characteristics. It also lies in its relationship with the planned layout of other historic terraces of a similar age and style.
22. Internally, the original characteristic two-room plan form at the appeal premises has been significantly eroded over time by the subdivision of the building into flats and commercial uses. Even though it has been significantly diluted by partitions and alterations, the original premise of a larger room to the front and a smaller room to the rear is still legible on the basement floor. Further alterations to the ground floor have more substantially eroded this premise. In this regard, the internal layout contributes only to a very small degree to the historic interest of the listed building.

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<sup>1</sup> Paragraph: 010 Reference ID: 21a-010-20190723

23. The removal of partitions such as the wall between the ground floor reception and surgery would be a benefit. However, the resulting spacious modern living room and kitchen in the design before me would not reflect the original spatial qualities and hierarchy of the house. Its more overtly modern ground floor layout would completely sever the original premise of a larger room to the front and a smaller room to the rear. Even considering the existing altered layout at the ground floor this would erode the historical and architectural interest of this listed building.
24. The existing and proposed floor plans and external elevations are drawn at 1:100 scale. However, there are no detailed drawings at a more in-depth scale comprehensively showing the full extent of the works/development proposed, such as the full details of how and where the services would be added. It is my judgment, notwithstanding the information provided within the submission seeking to clarify, that there is not the appropriate level of detail before me to provide the clear and convincing justification for the changes proposed. Of itself this is not determinative, but it adds to my concerns.
25. Consequently, the proposal would fail to preserve, and instead harm, the special architectural and historic interest, and hence significance of the Grade II listed building, known as Numbers 30-34 and attached railings. As a result, the expectations of the Act have not been met and the proposal would harm the significance of this designated heritage asset.
26. Paragraph 212 of the National Planning Policy Framework (the Framework) (2024) advises that great weight be given to the conservation of designated heritage assets (and the more important the asset, the greater the weight should be). Paragraph 213 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
27. With reference to paragraphs 214 and 215 of the Framework, in finding harm to the significance of the designated heritage asset, the magnitude of that harm should be assessed. In this instance, as the harm would be confined to the ground floor layout at the appeal property, the harm to the overall listed building would be 'less than substantial' but, nevertheless, of great weight. Under such circumstances, paragraph 215 advises that this harm should be weighed against the public benefits of the proposed development.
28. The scheme would provide social benefits from an additional apartment. This would boost the supply of two-bedroom apartments with good living conditions, in a sustainable location with access to open space nearby, by making an effective use of a windfall site. This would stimulate employment, the commissioning of services, and the retention of building craft skills. Moreover, future occupiers would bolster the demand for local services and facilities and would bring economic benefits from spending in the local area. However, it has not been demonstrated that the only way of securing the identified benefits is via the particular layout before me, moderating the weight I afford them.
29. Overall, the public benefits in favour of the proposed development do not outweigh the great weight that I attach to the harm I have found. Accordingly, the proposal would be contrary to the requirements of both the Act and the Framework, in so far as they relate to this main issue. It follows that it would also be contrary to the requirements of Policy D2 of the LP, which says, amongst other things, that the

Council will preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings.

### **Other Matters**

30. Given my findings of harm in relation to the listed building are confined to inside the building, I agree with the parties that there would be no harm to the Conservation Area.
31. I recognise that the appellant is willing to alter the scheme to include a partition at the ground floor. However, I must determine the appeal based on the merits of the scheme before me and the merits of an alternative layout are not therefore a matter for my consideration.

### **Conclusion**

32. **Appeal A:** The proposed development would conflict with the development plan and there are no material considerations which indicate that the decision should be made other than in accordance with it. Therefore, for the reasons given, I conclude that Appeal A should be dismissed.
33. **Appeal B:** For the reasons given, I conclude that Appeal B should be dismissed.

*Mr R Walker*

INSPECTOR