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# Appeal Decision

Site visit made on 30 April 2015

by **Andrew Dale BA (Hons) MA MRTPI**

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

Decision date: 4 June 2015

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## Appeal Ref: APP/X5210/C/14/2221303

### Land at UCL Mortimer Market Centre, Mortimer Market, London WC1E 6JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Robert Bexson (University College London Hospitals NHS Foundation Trust) against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 20 May 2014.
- The breach of planning control as alleged in the notice is "**Without planning permission:** The unauthorised installation of air handling plant, associated ductwork and pipework to flat roof of hospital building and ductwork to northeast (sic) side elevation."
- The requirement of the notice is set out as follows "... the ducting to the northwest (sic) elevation of the application property is permanently removed."
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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## Decision

1. It is hereby directed that the enforcement notice be corrected as follows:
  - (i) By altering the postcode "WC1E 6JD" in paragraph 2, in the address set out above paragraph 1 and on the plan attached to the notice to the postcode "WC1E 6JB".
  - (ii) By deleting the text "the ducting to the northwest elevation of the application property is permanently removed" in paragraph 5 and replacing it with the text "the ductwork to the north-east side elevation of the hospital building is permanently removed".
2. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the installation of air handling plant, associated ductwork and pipework to flat roof of hospital building and ductwork to north-east side elevation at UCL Mortimer Market Centre, Mortimer Market, London WC1E 6JB referred to in the notice.

## Procedural matter

3. There was no representative for the appellant at the accompanied site visit arranged in connection with this appeal. My site inspection was completed on

an unaccompanied basis and I am satisfied that I have sufficient information to determine this appeal. Neither the Council nor the appellant's agent has raised any procedural objections to this approach.

### **The enforcement notice - corrections**

4. The postcodes given in the notice and section D of the appeal form do not match. The one used by the appellant appears to be right. The correct site address is set out in the heading above. The notice will be corrected accordingly.
5. The alleged breach of planning control in paragraph 3 of the notice refers to ductwork to the north-east side elevation, whilst paragraph 5 requires the removal of ducting to the north-west elevation. It seems to me that the location described in the wording of the alleged breach is correct. The appellant does not appear to have been misled by the wording adopted in the notice. I shall correct paragraph 5 of the notice so that it refers to the north-east side elevation. In addition, for the sake of clarity and consistency I shall ensure that in paragraph 5 the word "ducting" is replaced with the word "ductwork" and the words "application property" are replaced with the words "hospital building".
6. I am satisfied that the corrections covered in paragraphs 4 and 5 above would not cause injustice to any party.

### **Background and matters of clarification**

7. Mortimer Market Centre is essentially a part 4-storey, part 6-storey building containing various hospital, medical and research facilities and institutions.
8. The Council has no objections to the installation of air handling plant, associated ductwork and pipework to the flat roof of the 6-storey part of the building. The reasons for issuing the notice and the requirement of the notice (as corrected) are concerned with the ductwork that has been fixed to the north-east elevation of that part of the building.
9. Section 173(11) of the 1990 Act indicates that where an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed but does not do so and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted for those works. Put another way, even if this appeal was dismissed, there would potentially be an unconditional deemed planning permission available for the air handling plant, associated ductwork and pipework on the flat roof of the hospital building.

### **The appeal on ground (a) and the deemed planning application**

10. Having regard to the reasons for issuing the enforcement notice, I consider that, in assessing whether planning permission ought to be granted for what is alleged in the notice, the main issue is the effect of the ductwork to the north-east side elevation upon the character and appearance of the host building and the Bloomsbury Conservation Area.
11. The most relevant policies of the development plan are found in the Camden Core Strategy 2010-2025 and the Camden Development Policies 2010-2025.

Policy CS14 from the former and Policies DP24 and DP25 from the latter, when read together, emphasize the need to secure high quality design, promote high quality places and conserve Camden's heritage. These policies are broadly consistent with the National Planning Policy Framework and the Planning Practice Guidance. There is a duty imposed by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring decision-makers to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. I adhere to that form of wording in this appeal, given that it is derived from the statutory duty, rather than the form of wording found in Policy DP25 (part b).

12. The development plan policies are augmented by adopted supplementary planning documents. Of particular relevance is CPG1 Design which deals with design excellence, heritage and building services equipment. The Council has also adopted its Bloomsbury Conservation Area Appraisal and Management Strategy (BCAAMS) which I have also read and had regard to.
13. The Mortimer Market Centre has a roughly T-shaped footprint and is dominated by its 6-storey, rear wing. It appears to date from about the 1960s according to the appellant. It is not a particularly good building in architectural terms. The regular cladding sections and square, flush-fitting windows of the rear wing serve only to emphasize its monolithic nature. There is a notable degree of awkwardness where this part joins onto the lower, 4-storey, brick-faced section that fronts onto Capper Street. This is especially so on the north-eastern side where there is also a very tall, semi-circular, staircase tower of metal construction behind the brick-faced wing and very visible metal-faced, box-like housing close to the edge of the flat roof above the 6<sup>th</sup> storey.
14. The host building, unsurprisingly, is not listed as a positive contributor to the character and appearance of the conservation area in the BCAAMS. It is one of the larger footprint buildings associated with a number of large institutional uses (hospitals and universities) which have shaped the development pattern over time. The Rayne Building to the north-west and the Macmillan Cancer Centre to the north-east are two other examples. Any merit the host building has is limited to the fact that it reflects the historical evolution of the conservation area and that its current use helps to confirm Bloomsbury's role as an important area for medical and university facilities. No further accolade is warranted and I note, like the appellant, that neither the building nor Mortimer Market is explicitly mentioned in the BCAAMS.
15. Mortimer Market is a rather secluded, one-way service road which passes around the Mortimer Market Centre. It falls within a sub-area that the BCAAMS says is of a commercial character. As well as the host building, the road serves the rear of the Rayne Building, the rear of the Macmillan Cancer Centre and the rear of various commercial properties along the eastern side of Tottenham Court Road. Most visitors to the Mortimer Market Centre are likely to arrive at the public entrance on the south-western side of the building (the opposite side to where the ducting is located) from Capper Street or from an alleyway joining onto Tottenham Court Road. The service road is characterized by refuse storage areas, rear fire exits and service doors, limited parking areas for cars, motorbikes and bicycles and waiting ambulances and their crews. Thus, whilst members of the public can technically access Mortimer Market it is not used as a general route by passers-by as such. To say that the site is semi-public, like

- the Council does, is not incorrect but this probably exaggerates the degree to which it is actually used by the public.
16. The subject ducting spills over the edge of the roof and comes down the north-eastern side elevation as far as the upper part of the second floor level. It has a steel framework with black cladding inside that framework. Given the arrangement of the buildings hereabouts and the close proximity of the semi-circular staircase tower, the ducting is only visible from two areas.
  17. The very top part of the ducting can be glimpsed in oblique views from Capper Street when standing near to its junction with Shropshire Place. In this very short-lived view, it is seen against the backdrop of the far larger metal roof housing and it is not at all incongruous.
  18. It is possible to view the whole of the ductwork from the northern corner of Mortimer Market. This view is centred on where the rear elevations of the Rayne Building and the Macmillan Cancer Centre meet. It is a limited view in the context of Mortimer Market as a whole. For example, once observers have progressed beyond the south-eastern end of the rear entrance to the Macmillan Cancer Centre, the ducting is obscured from their view by the semi-circular staircase tower. In the available view, which is no doubt repeated when viewing from some of the rear-facing windows of the Rayne Building and the Macmillan Cancer Centre, the ducting does not appear out of place. This is because the ducting is located where there is already an awkward juxtaposition between the lower and higher parts of the building and the materials, design and appearance of the ducting are such that it blends in reasonably well with the steel staircase tower to the side and below, the array of tall vertical pipework behind and the metal-faced roof housing above.
  19. Given the very large scale of the building, I do not consider the ducting to be a dominant feature of the building. It certainly has a far lesser visual impact on the building than the staircase tower. This is not a scheme for a new building and the appellant explains why he has not been able to achieve a solution which incorporates the building services equipment within the existing building. I am satisfied that the ductwork is otherwise located on the least visually conspicuous exterior part of the building and that its design and materials are not inconsistent with the character and appearance of this particular part of the building.
  20. As pointed out in CPG1 Design, fewer external solutions are likely to be appropriate in locations within conservation areas. There are many interesting examples of historic rear elevations in Bloomsbury Conservation Area and these are an integral part of the character of the area. However, I do not regard the elevation to which the ductwork has been fixed as being integral to the character and appearance of this conservation area. Moreover, in terms of location, design and external appearance, the ductwork is sufficiently respectful of the local context of Mortimer Market as a service road to the surrounding medical and research enclave and of the generally commercial character of the wider surroundings.
  21. In my view, the ductwork has not led to any harm to the significance of the designated heritage asset – the Bloomsbury Conservation Area. The ductwork preserves the character and appearance of the conservation area.

22. The appellant has suggested 3 alternative cladding treatments for the ductwork. I have considered these but I find the development to be acceptable as constructed. The Council says in its final comments that it has "... just received a new planning application 2014/6125/NEW which has positioned the flue in a new position and elevation." That application will no doubt be determined on its own merits, as I have sought to do with this appeal.
23. Drawing together the above, I conclude on the main issue that the ductwork to the north-east side elevation is not detrimental to the character and appearance of the host building and preserves the character and appearance of the Bloomsbury Conservation Area. I find no material conflict with the development plan policies discussed in paragraph 11 above and set out in paragraph 4 of the enforcement notice. I do not therefore go on to consider the other material considerations proffered by the appellant, including the stated health-care benefits of and the need for the dermatological theatres served by the ductwork.
24. The Council has not set out any conditions to be imposed in the event of the appeal being allowed and I consider that there is no need for any.
25. I have had regard to all other matters raised in the written representations but my finding on the main issue is decisive in this appeal. I find nothing to outweigh the conclusion I have reached that the appeal on ground (a) and the deemed planning application should succeed. Planning permission will be granted.

**The appeal on grounds (f) and (g)**

26. For the reasons given above the appeal on ground (a) succeeded. The notice has been quashed. Grounds (f) and (g) do not therefore need to be considered.

*Andrew Dale*

INSPECTOR