



Appeal Decisions

Site visit made on 13 September 2022

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

Appeal A: APP/X5990/W/22/3290883

79 Dean Street, London W1D 3SJ

- 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 Qin Xiao against the decision of City of Westminster Council.
 - The application Ref: 21/05843/FULL, dated 18 August 2021, was refused by notice dated 21 December 2021.
 - The development proposed is use of the 1st Floor for massage parlour/Chinese traditional medicine treatments (*sui Generis*).
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Appeal B: APP/X5990/Y/22/3290882

79 Dean Street, London W1D 3SJ

- 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 Qin Xiao against the decision of City of Westminster Council.
 - The application Ref: 21/05844/LBC, dated 18 August 2021, was refused by notice dated 21 December 2021.
 - The works proposed are internal partitions comprising of lightweight internal partitions.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by City of Westminster Council against Mr Qin Xiao. This application is the subject of a separate decision.

Preliminary Matters

4. While I note the description of development as stated in the application forms, I have used the description from the decision notice in the headers above in the interests of clarity.
5. From the evidence and my observations during the site visit, the works have been carried out. However, in the interests of certainty, I have made my assessment based on the submitted drawings.
6. Paragraph 194 of the National Planning Policy Framework 2021 (the Framework) requires appellants to describe the significance of any heritage assets that may be affected by a proposal. It goes on to advise that this

should be proportionate to the asset's importance and sufficient to understand the potential impact of a proposal on its significance when assessed using appropriate expertise.

7. In this particular instance no such assessment was undertaken, and insufficient information has therefore been provided to determine the potential harm that could arise from the proposal. I acknowledge the evidence regarding the exterior of the building and demountable stands on the windowsills.
8. However, no information has been provided by an appropriately accredited expert regarding the historic phasing of the dwelling and the significance of internal fabric, fixtures and fittings that could potentially be affected by the proposal. As a result, I do not have sufficient information to determine the effect on the special interest of the listed building and Appeal B must consequently be dismissed on that basis.

Main Issues

9. Bearing in mind the above, the main issues are:
 - whether the development accords with the Council's development plan strategy for the loss of housing; and
 - the effect of the development on the living conditions of neighbouring occupiers with regard to noise.

Reasons

Loss of housing

10. The first floor has been converted to a massage parlour and space for the provision of Chinese traditional medicine treatments. The internal space has been partitioned approximately in line with the submitted drawings and the works have resulted in the loss of a residential unit.
11. Policy 8C of the City Plan 2019 – 2040 Adopted April 2021 (CP) states that all existing residential units, uses, floorspace and land will be protected, except where the reconfiguration or redevelopment of supported or affordable housing would better meet need; or non-family sized housing is being reconfigured to create family sized housing.
12. Since the first-floor residential unit has been altered to a non-residential use, the works do not accord with this Policy.
13. Consequently, the development does not accord with the Council's development plan strategy for the loss of housing. It conflicts with CP Policy 8C which relates to housing delivery.

Living conditions

14. The Appellant has not provided any information regarding the operation of the use such as opening hours and number of customers. The Council has not set out in detail the way in which, in its view, the development negatively impacts the residential amenity of the use of the upper floors.
15. From the evidence, the residential dwelling above is in close proximity to the first-floor use and the shared access staircase. Therefore, in the absence of evidence to demonstrate otherwise, it is likely that noise from the footsteps

and conversations between customers on the first floor and using the staircase, particularly late at night, would unduly affect the living conditions of neighbouring occupiers.

16. Consequently, the development harms the living conditions of neighbouring occupiers with regard to noise. Therefore, it conflicts with CP Policies 7 and 33 which seek, among other things, to protect local environmental quality and development that minimise noise impacts and prevents noise intrusion to residential developments.

Other Matters

17. I note the history of the site with regard to the use, tenancy and length of lease. Although planning permission was granted for the change of use of parts of the wider building, from the evidence this planning permission does not apply to the appeal site. This matter therefore does not override the development plan conflict identified above.

Conclusion

18. For the reasons given above the development conflicts with the development as a whole and paragraph 194 of the Framework. In the absence of material considerations to indicate otherwise, the appeals are dismissed.

R Sabu

INSPECTOR