



# Appeal Decision

Site visit made on 21 June 2023

**by M Russell BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 September 2023**

---

**Appeal Ref: APP/X5990/W/22/3310880**

**30-32 Mortimer Street, London W1W 7RE**

- 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 ELSA Mortimer Street Limited against the decision of City of Westminster Council.
  - The application Ref 22/01037/FULL, dated 14 February 2022, was refused by notice dated 4 October 2022.
  - The development proposed is described as 'Demolition of the existing building and redevelopment to provide a 6-storey building (plus basement) for Commercial, Business and Service Use (Class E). Creation of terraces at fourth and fifth levels and the installation of plant and a green roof at main roof level'.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - i) whether the proposal would preserve or enhance the settings of the East Marylebone Conservation Area (CA) and the Grade II Listed Building at Nos 34-38 Mortimer Street;
  - ii) the effect of the proposal on the highway on Bywell Place;
  - iii) the effect of the proposal on the living conditions of occupiers of neighbouring residential properties with particular regard to outlook, privacy and light; and
  - iv) whether the whole life carbon effects of the proposal would be acceptable having regard to the development plan and national policy.

## Reasons

### *Settings of the CA and Nos 34-38 Mortimer Street*

3. The significance of the CA primarily derives from the historic origins of the network of streets and the generally high quality of its built form. The City of Westminster East Marylebone Conservation Area Audit Supplementary Planning Guidance (2006) (SPG) confirms that the CA has a prevailing densely developed urban character which is characterised by its diverse townscape and the range and interest of its buildings and uses. There is a rich mix of building types and styles and buildings are more often of a large scale. There is also variation in the form and height of individual buildings within the CA. The SPG notes that despite the range of styles and uses 'buildings within the CA are

universally characterised by their use of high quality materials, fine craftsmanship and, in many cases, vivid colour'. These are aspects which positively contribute to the settings of the CA and the listed buildings within it, adding to their significance.

4. The SPG describes the existing building at No 30-32 Mortimer Street as an example of a successful recladding scheme. Whether or not this be the case, and notwithstanding the varied architecture in the CA, there are factors relating to the existing building on the site which make it stand out as somewhat of an anomaly within the otherwise high quality group of buildings that it sits within on Mortimer Street between the junctions of Wells Street and Great Titchfield Street.
5. Firstly, its mass and higher parapet line markedly contrasts with the roof forms of other buildings in the group including the elegant architecture of the attached buildings to either side at No 28 Mortimer Street and the Grade II listed building at 34-38 Mortimer Street. Notably, its plain flank wall protrudes above the eaves of the listed building and appears dominant over the lower profile of the listed building's roofscape. Furthermore, the expanses of glazing and intervening cladding do not align well with the floor levels or more refined detailing on neighbouring buildings in the group, particularly those of the listed building.
6. The existing building better assimilates into its surroundings on Wells Street due to its comparable height, form and massing to other buildings on that street. However, for the reasons outlined, the existing building does not fully reflect the general high quality of the CA's built environment and also detracts from the setting of the listed building at Nos 34-38.
7. Similar to the existing situation, the proposal includes a flank wall which would sit next to and above the eaves level of Nos 34 – 38, appearing dominant in views from within the vicinity of the junction of Mortimer Street with Great Titchfield Street. In this regard, the proposal would replicate form which distracts from the architectural splendour of the adjacent listed building. Therefore, the development would not take the opportunity to improve this relationship and enhance the settings of the CA or the listed building. Taken on its own, I accept that the effect of this element of the proposal would be to some extent neutral factoring in the existing situation.
8. However, the proposed fifth floor would incorporate a substantially glazed front façade and bronzed metal cladding to its sides. Even accounting for its position set away from the street frontage, this feature would contrast with the more unified design and materials of the lower floors. Its protrusion significantly above the roofline of other buildings within the group would be noticeable in views from the Mortimer Street/Great Titchfield Street junction and from the windows of nearby buildings within the CA, particularly from upper floors opposite the site. Consequently, this element of the proposal would combine with the flank wall of the fourth floor to compound the proposal's dominating effect, unacceptably altering how the settings of the listed building and the CA would be experienced.
9. In addition, from what I saw on my site visit, roof terraces are not a feature of the roofscape within this group of buildings on the Mortimer Street elevation. The artist impressions provided indicate that there would be a balustrade and planting on the proposed terrace to this elevation. Together with any furniture

placed within the terrace, these features have the potential to have a cluttered appearance which would detract from the order and quality of the Mortimer Street roofscape. This would add to the harm already identified, further detracting from the settings of the identified heritage assets.

10. With regards to the Wells Street frontage, due to the relative spacing between buildings, the existing variations in the parapet lines and the extent to which the higher elements of the proposal would be set back from the street frontage, I am satisfied that the higher parts of the development would have a similar relationship with this street as the top floor of No 26 Mortimer Street. I also find that the external escape stair on the Bywell Place elevation would not have a harmful visual effect on the CA due to its discreet location on this back street. Therefore, I do not share the same concerns as the Council on these specific aspects of the design.
11. I also acknowledge that there are some positive aspects to the design which would improve upon the existing building. The solid to void ratios to the lower sections of the front elevation would more closely correspond with the architectural rhythm of the fenestration on neighbouring buildings. Some of the materials and finishes incorporated, including the textured brickwork and stone window reveals, would be of a high quality. However, these aspects of the scheme do not overcome my overriding concerns.
12. Overall, for the reasons outlined and having regard to the requirements of the National Planning Policy Framework (the Framework), I find that the proposal would not preserve or enhance the settings of the CA or the listed building at Nos 34-38 Mortimer Street and would result in less than substantial harm in these respects. The Framework states that where a development would 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.
13. The existing building is currently vacant and the appellant suggests that it is not lettable in its current condition. I accept that redevelopment of the site would provide an opportunity to improve the standard of office accommodation on the site when compared with the existing building. In turn this could help to bring the site back into use with the potential of associated job creation both in terms of the construction of the building and its future use. These matters are public benefits which have the potential to attract very positive weight.
14. However, I am not persuaded that the harmful aspects of the design described are essential to achieve such benefits. Therefore, the weight to which I afford to the above matters as public benefits is somewhat diminished. Consequently, I find that there are not public benefits in this instance sufficient to outweigh the less than substantial harm to the identified heritage assets.
15. I conclude, the development would not preserve or enhance the character or appearance of the CA and would also be harmful to the setting of the listed building at Nos 34-38 Mortimer Street. In that regard, it would conflict with the design, context and conservation requirements of Policies 38 (Design principles), 39 (Westminster's heritage) and 40 (Townscape and architecture) of the City of Westminster City Plan (2021) (CP), Policy PR1 (Promoting Regeneration) of the Fitzrovia West Neighbourhood Plan 2020 to 2040 (2021) (NP) and the Framework.

*Effect on the highway on Bywell Place*

16. The appellant has confirmed that due to some discrepancies between the local survey and the Ordnance Survey mapping, this regrettably resulted in the red line being incorrectly drawn on the proposed ground floor plan. However, the red line on the proposed site plan and proposed location plan appear to follow the alignment of the existing building. These plans show that the footprint of the proposed building would allow for some limited widening of the footway on Bywell Place. On this basis, the proposal would not have a detrimental effect on the highway. The status of the highway on Bywell Place, in terms of whether it is adopted or not, has not been a factor in my findings.
17. Even if I were to reach an alternative view, this would not in any case alter the outcome of this appeal given my conclusions on the other main issues.
18. I conclude, the proposal would not have a detrimental effect on the public highway. In that regard, it would not conflict with the requirements for sustainable transport and to resist the loss of highway land, particularly footways in Policies 25 (Walking and Cycling), 28 (Highway Access and Management) and 43 (Public Realm) of the CP.

*Living conditions of neighbouring occupiers*

19. There is an established close relationship between No 53 Wells Street and the appeal site on Bywell Place. Whether or not the current outlook from windows at No 53 onto Bywell Place is attractive, the shape of the existing building on the appeal site includes an inset section which steps away from the highway boundary. This provides some relief from the mass of the existing building when experienced from No 53, as depicted in the photograph at Figure 14 of the appellant's statement of case.
20. The building would have a greater mass and height than the existing building adjacent to the boundary with Bywell Place. Due to its close proximity, it would be likely to feel more imposing when seen from the facing windows serving properties within No 53. As demonstrated by the diagrammatic views at Figure 12 of the appellant's statement of case, the effects of the proposal on outlook would be most profound when experienced from the 2nd and 3rd floor levels within No 53 which currently have a more open aspect towards a lower roofscape. In this respect there would be some detriment to the quality of outlook for at least some of the occupiers of properties within No 53.
21. With regards to privacy, the sight line diagrams provided by the appellant demonstrate that views from the proposed terraces towards windows serving No 53 would be oblique as a result of the relative height and the narrow width of Bywell Place. I am also satisfied that the line of sight and distance between the windows and terraces serving the development and other neighbouring properties in the area would be sufficient to ensure that there would be no unacceptable impacts on neighbouring privacy.
22. However, the relationships between the windows on the existing building and those serving No 53 are such that acceptable levels of privacy are provided. In contrast, the proposal would include a proliferation of windows facing and in close proximity to No 53 meaning that occupiers within No 53 are likely to feel more overlooked than is presently the case. The appellant suggests that a

condition could be attached requiring internal fins, fixed blinds or opaque glazing to be installed. I accept that such a condition could mitigate the effects on privacy to some extent, although given the number and proximity of windows in the Bywell Place elevation of the development, some perceived overlooking impacts would still remain.

23. In terms of light, the evidence before me indicates that the BRE guidelines set out that reductions of more than 20% in the Vertical Sky Component (VSC) from existing values should be avoided and would be noticeable to neighbouring occupiers. The appellant's Daylight and Sunlight Report (26 January 2022) confirms at paragraph 4.13 that for occupiers of No 53 'the results show that there will be a loss of VSC at all four levels (Ground, 1st, 2nd and 3rd floors) which would be classed as "noticeable" as it exceeds the notional threshold of 20%, but with the percentage losses of VSC ranging from 27.82% to 33.59%, they are still within margins that have been considered acceptable elsewhere in Westminster.'
24. I am unaware of the full circumstances of where similar VSC measurements on sites in Westminster have been accepted. Nevertheless, I accept that the windows that would be affected are large and the appellant has advised that the VSC measurements does not account for this. From what I have seen the affected windows serve bathrooms and kitchens. The appellant has provided Average Daylight Factor (ADF) measurements which indicate that the only room not to meet the target ADF value for a family kitchen is a ground floor window at No 53 which is opaque glazed. However, I understand that ADF measurements are usually only applied to the adequacy of daylight in new build dwellings.
25. Paragraph 125 of the Framework confirms that a flexible approach should be taken in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site, as long as the resulting scheme would provide acceptable living standards. Overall, I find that there would be a noticeable reduction in the levels of light experienced by neighbouring occupiers within the kitchens and bathrooms serving properties at No 53. However, taking the mitigating factors put forward by the appellant into account, the overall effects on light would be limited adverse.
26. In considering all the above aspects, I understand that the affected windows serve small kitchens and bathrooms and that the larger main habitable rooms serving these properties have an aspect on to Wells Street. Furthermore, any dining facilities within the kitchens are also likely to be limited in size.
27. Even so, I have found that there would be some detriment to the living conditions of occupiers of No 53 in terms of levels of outlook, privacy and light when compared with the existing situation. Even though the level of harm would be limited when each of these matters are considered on an individual basis, the kitchens on the upper floors of No 53 are generally served by clear glazed windows. It is also likely that they are well used by their occupiers which means that even limited changes to the living environment are likely to be highly discernible particularly when the combined effects on outlook, privacy and light are factored in. On this basis, I find that the proposals would unacceptably diminish the quality of the living environment within the kitchens serving properties at No 53.

28. I conclude, the proposal would result in material harm to the living conditions of occupiers of properties at No 53 Wells Street when levels of outlook, privacy and light are considered together. In that regard, it would conflict with the requirements for development to protect amenity in Policies 7 (Managing development for Westminster's people) and 38 (Design principles) of the LP. For the same reasons the proposal would also conflict with Paragraph 130 of the Framework which requires amongst other things that developments create places with a high standard of amenity for existing and future users.

#### *Whole Life Carbon*

29. During the application process, the Council's sustainability officer identified discrepancies in the appellant's Whole Life Carbon (WLC) assessment including that different figures were provided for the operational energy and emissions figures used in the appellant's Energy Statement to those in the WLC assessment. The appellant sought to address the discrepancies through Appendix 3 to their original appeal statement and suggests that the new building would deliver a lower WLC cost over an assumed 60-year lifespan.

30. However, in responding to the appeal case, the Council's Sustainability Officer noted that the appellant's assumptions were made on the basis of old Greater London Authority (GLA) WLC guidance. From the evidence before me, the updated GLA WLC template from March 2022 requires more detailed information. Paragraphs 5.55 – 5.61 together with Appendix 8 of the Council's statement of case set out several areas to be addressed having regard to the March 2022 requirements. The appellant has not disputed that their previous WLC assessment was deficient having regard to the latest guidance.

31. Further information has been submitted with the appellant's final comments including a revised WLC Assessment with additional appended data. I am mindful that the Council and third-parties have not had an opportunity to comment on this additional information. As I am dismissing this appeal for other reasons, I have not pursued the matter further with the other parties and it has not been necessary to reach a definitive view.

32. Notwithstanding the above, from my own observations, the latest WLC Assessment provided includes updated embodied carbon figures and maintains the position that the new-build option is the most efficient scenario over either a 'light touch' or 'comprehensive' refurbishment of the existing building. However, it does not include any substantive additional commentary which specifically addresses the updated WLC guidance and the detailed concerns of the Council. Therefore, it is not clear whether the omissions referred to in the Council's statement of case have been specifically accounted for. On this basis, I am not persuaded that the proposal has been adequately justified in terms of its WLC credentials.

33. I conclude, it has not been demonstrated that the Whole Life Carbon effects of the development have been adequately considered having regard to the sustainability and Whole Life Carbon requirements in Policy 38 (Design Principles) of the LP and Policy PR1 (Promoting Regeneration) of the NP and paragraph 152 of the Framework which states that the planning system should support the transition to a low carbon future.

## **Other Matters**

34. Even if I had concluded that the proposal would be acceptable from a Whole Life Carbon perspective such that it would be a benefit, this would not justify or outweigh the harm identified in respect of the settings of heritage assets and living conditions.
35. The building would incorporate photovoltaic panels and a 'blue/green roof' within its design and it is intended that the building services will include renewable technologies for heating and cooling. The development would also be car-free and would include policy compliant cycle parking and end of journey facilities to encourage active travel to the site. The appellant has indicated that planting will be included on the proposed terraces. The proposal would also likely generate income for the Council through business rates and the Community Infrastructure Levy (CIL). However, any benefits arising from these matters would not be of a significant magnitude.

## **Conclusion**

36. The proposal would not preserve or enhance the settings of the East Marylebone Conservation Area and the Grade II Listed Building at Nos 34-38 Mortimer Street. I have also found that there would be material harm to the living conditions of occupiers of No 53 Wells Street. Furthermore, not been demonstrated that the Whole Life Carbon effects of the development have been adequately considered. The proposal therefore conflicts with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

*M Russell*

INSPECTOR