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# Appeal Decision

Site visit made on 6 November 2024

**by R Gee BA (Hons) Dip TP PGCert UD MRTPI**

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

**Decision date: 22 November 2024**

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**Appeal Ref: APP/X5990/W/24/3349428**  
**37 & 38 Clarges Street, London W1J 7EL**

- 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 Ken Cheong against the decision of City of Westminster Council.
  - The application Ref is 23/07770/FULL.
  - The development proposed is Installation of two air conditioning units at 37-38 Clarges Street located to south west elevation or rear courtyard at 1st floor level.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Part E of the appeal form states that the description of development has not changed. Nevertheless, a different description of development is entered. This appears to reflect that the Council used on their decision notice. There is no indication that a different description has been agreed between the parties. Consequently, in my banner heading above, I have taken the description of development from the original application form.
3. The appeal site lies within a conservation area (CA) and relates to nearby listed buildings. Accordingly, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

## Main Issue

4. The main issues are:
  - i) the effect of the proposal on the living conditions of existing occupiers, with particular regard to noise and disturbance;
  - ii) whether the proposed development would preserve the setting of adjacent listed buildings; and
  - iii) the effect of the proposed development on the character and appearance of the Mayfair Conservation Area (CA).

## Reasons

### *Living conditions*

5. The appeal property comprises a substantial building. It is understood that the lower ground and ground floor levels are utilised as a restaurant with the upper floors of the building in use as residential flats.
6. I appreciate that the frontage of the appeal premises is a busy street comprising a mix of residential and commercial uses. However, the appeal proposal relates to the installation of air conditioning units (ACUs) to the rear of residential properties at upper floors, which have a more quiet and residential character, and therefore noise levels are likely to be lower.
7. The ACUs would be proximate to windows that serve residential properties. At my site visit, I observed the window to Flat 12 to be openable. It is unclear what other windows are openable on this rear elevation. Nevertheless, the distance between the ACUs and noise sensitive receptors is such that there is potential for the plant/equipment to affect the living conditions of residents, including on account of noise and vibration from the units.
8. In support of the application the appellant has submitted correspondence<sup>1</sup> and an undated statement<sup>2</sup> in respect of noise. Amongst other things, this states that although the proposal is for a new heating/cooling system to serve 2no flats, it would operate in a cooling mode only, for a small number of days per year. Whilst I note the appellants assertion in this regard, this would be unenforceable.
9. The supporting documentation refers to a background sound level in the rear courtyard location, undertaken in respect of a previous planning application<sup>3</sup>. I recognise that there may be similarities between the proposals. Nevertheless, the evidence does not establish the current ambient and background noise levels relative to the appeal site. Consequently, the evidence before me does not provide a robust assessment of the proposals impact upon existing residential properties.
10. My attention has been drawn to an acoustic report for plant items on the roof of the penthouse flat of the appeal building in respect of a previous appeal<sup>4</sup> relating to different premises. It has been suggested that these noise levels should be used to provide the background noise levels for an assessment of the current proposal. This report was undertaken a considerable time ago and I cannot be satisfied that it would be reflective of the current situation. Furthermore, from the information before me, the report related to a different part of the building. For these reasons, I therefore cannot be satisfied that this represents a comparable assessment.
11. I have carefully considered the representations of the appellant, including that the effects of vibration, could be enforced through other regimes. I have been mindful of relevant advice in the National Planning Policy Framework (the

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<sup>1</sup> Including an email from Brian Lawrence dated 26 July 2024 AT 13:43:51

<sup>2</sup> 'Supplementary Acoustic Report – Flat 31, 37-38 Clarges Street'

<sup>3</sup> Aragawa planning application reference 21/08123 FUL. Background noise level in the rear courtyard location measured on 18 July 2021

<sup>4</sup> APP/X5990/C/04/1142067

Framework) and the expectation of a good standard of amenity for the occupiers of the residential accommodation. In the absence of a robust noise assessment, I am unable to conclude that the development would not harm the living conditions of the neighbouring occupiers.

12. Accordingly, for the above reasons, I cannot be satisfied that the proposed ACUs would not cause harm to the living conditions of the occupants of neighbouring properties, with particular regard to noise and disturbance. The development therefore conflicts with Policies 7 and 33 of the City Plan 2019-2040 (City Plan). These require, amongst other things, the residential amenity of existing residential occupiers to be protected.

### *Setting of Listed Buildings*

13. No 38 Clarges Street is an unlisted building. However, the appeal site is surrounded at its sides and rear by listed buildings. No 12A Half Moon Street (List Entry No. 1228796) is a Grade II listed late 18<sup>th</sup> century terrace house with some alterations. It is of 4 storeys, with basement and dormered mansard. No 14 Half Moon Street (List Entry No. 1357086) is an early 18<sup>th</sup> century terrace house of Grade II listed status, with alterations undertaken in the late 18<sup>th</sup> and early 19<sup>th</sup> century. Nos 35-36 Clarges Street (List Entry No 1219452) comprise a pair of town houses circa 1730, altered late 18<sup>th</sup>/early 19<sup>th</sup> century. The list description details their decorative fenestration and states that the interior of No 36 retains many features of 1730. Flemings Hotel, Nos 39-42 Clarges Street (List Entry No. 1066251) comprises a group of terrace houses, circa 1730, but much altered for hotel.
14. Based on my site visit and the evidence before me, I find that the listed buildings special interest, insofar as is relevant to the appeal, is derived from their historic and architectural interest. The buildings surviving historic fabric, use of traditional materials, the legibility of its historic plan form, its pleasing architectural style and design as high-quality examples of historic, buildings all make important contributions in these regards.
15. While I recognise that the rear elevations of the listed buildings are of a more functional character than the decorative front facades, and that they are not specifically referenced in the list description, nevertheless, listings are primarily for identification purposes and do not provide an exhaustive or complete description of the special interest. Given the close, intimate relationship between built form, the appeal property is clearly within the setting of the listed buildings identified above.
16. The Westminster Supplementary Planning Guidance: Development and Demolition in Conservation Areas, states that air conditioning plant should always be located out of sight, within the envelope of the roof or screened by an appropriately designed roof-like enclosure.
17. The proposal seeks to add two ACUs; one of which would be mounted on the rear wall and one on a flat roof. The wall mounted unit would add visual clutter that would be highly visible in this location. I recognise the presence of sky lights in the flat roof. However, the industrial appearance of the ACUs would be incongruous in relation to the historic environment in which the appeal property sits. Consequently, the proposal would fail to preserve the setting of the adjacent listed buildings.

18. I recognise that the ACUs would not be visible from the public domain. However, views would be possible from the windows to the rear of the adjoining listed buildings. Listed buildings are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views of the building can be gained. I give this harm considerable importance and weight in the planning balance of the appeal.
19. Due to the availability of views from nearby listed properties the Council seeks screening of the ACUs to help assimilate the proposal into its surroundings. To leave such a matter to a condition would leave serious doubts over the appearance and effectiveness of the screening, as sufficient details are not before me. It could also potentially substantially alter the nature of the development proposed. Moreover, to allow details of the screening to be submitted to the Council for its approval, there is no assurance that an acceptable form of screening would be approved by the Council. I am therefore not persuaded that it would be reasonable to apply such a condition.
20. Given the above, I conclude that the proposal would fail to preserve the special historic interest and significance of the identified listed buildings. The proposal would fail to satisfy the requirements of the Act and the Framework in this regard.

### *Conservation Area*

21. The boundaries of the Mayfair CA encapsulate the appeal site. Clarges Street is mostly made up of Georgian town houses and modern office buildings. The appeal site is a large mid-terrace building within a tightly knit built up area of Mayfair. The CA is characterised by a mix of high-quality buildings in a variety of uses which vary in character from street to street with formal tall traditional terraces with attractive architectural detailing a predominant feature. In my view, the significance of the CA is derived from its historical associations, the architectural detailing and the variation of the high-quality buildings within it.
22. The front elevation of the appeal property contributes positively to the character and appearance of the CA. The rear of the building has been subject to adaptation and has a simpler form when compared to the site frontage. The rear is therefore considered to make a limited contribution to the character and appearance of the CA. I note this is a view shared by the Council.
23. I have paid special attention to the preserving or enhancing the character or appearance of the CA as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
24. The new ACUs would be located to the rear elevation of the property. In this position, none of the proposal would be evident from the street because tall buildings enclose the space to the rear of the building from the public realm. There would, however, be views, albeit limited, of the ACUs from the windows of properties beyond the rear of the site.
25. Despite the harm that would be caused to the setting of the adjacent listed buildings I do not find that the proposal would be detrimental to the character or appearance of the CA. This is because the proposal would not be visible from the public domain and only have limited prominence from the private domain. Under such circumstances case law<sup>5</sup> has established that proposals

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<sup>5</sup> South Oxfordshire DC v SSE & J Donaldson [1991] CO/1440/89

must be judged according to their effect on a CA as a whole and must therefore have a moderate degree of prominence. Given the above, I find that the proposal would not be detrimental to the CA and thus preserve its significance.

26. Accordingly, I find the development would leave the character and appearance of the CA preserved. In this respect I find that there is no conflict with Policies 38, 39 and 40 of the City Plan, which amongst other things, requires development to preserve or enhance the significance of the historic environment.

### **Other Matters**

27. The appellant submits that the flats were advertised as being luxury accommodation with the benefit of air conditioning and goes on to state that the central air conditioning system was decommissioned with each flat making its own arrangements. I appreciate the increase in energy costs and the appellant's desire for air conditioning. I also recognise that developments may need to adapt for climate change, including measures such as those to reduce the impact of overheating. Be that as it may, I am not satisfied that the appeal proposal is the only means of achieving this. In any event, these matters do not outweigh the harm identified.
28. My attention has been drawn to a number of planning applications and appeal decisions that have involved proposals for ACUs, or similar plant/equipment, including photographs of a similar unit nearby at Flat 31 and the Fleming Hotel. In regard to the 'Aragawa' application, the evidence before me indicates that this application was accompanied by an acoustic report. It is understood that this was subsequently assessed by the Council to be acceptable, and that the proposal included screening. Reference has been made to a 'much more extensive modification' for air conditioning in Harley Street<sup>6</sup>. However, I am not aware of the exact nature of the proposals, or the full information before the decision-maker. In my experience, it is rare that direct parallels can be drawn between one scheme and another because local circumstances often vary. In any event, I have assessed the new development on its own merits.
29. A lack of objection to the proposal from occupiers of the building, and a lack of complaints in relation to an air conditioning unit at Flat 31, which I understand has been in operation for a number of years, weighs neither for, nor against the proposal.
30. Concerns regarding due process during the processing of the planning application, including validation, fall outside of the remit of this appeal, which has been decided on the evidence and merits of the proposals before me.
31. The appellant raises concerns that the plant installed on the neighbouring property has not been installed in accordance with the planning approval. Concerns regarding compliance with planning approvals at nearby sites fall outside the remit of my decision and is a matter for the Council.

### **Public Benefits and Heritage Balance**

32. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 206 advises that

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<sup>6</sup> Reference 21/03085/Full.

significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification. I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.

33. Where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
34. I acknowledge that the use of an ACU may improve the living conditions of the occupants of the property. However, this is a private benefit. Accordingly, there would be insufficient public benefits arising from the proposal to outweigh the harm identified.
35. Given the above, I conclude that the proposal would fail to preserve the special historic interest and significance of the adjacent listed buildings. The proposal would fail to satisfy the requirements of the Act and the Framework. The proposal would also conflict with Policy 39 of the City Plan, that seeks, among other things to protect and enhance the historic environment and assets of historical value, and conserve and enhance local features of architectural and historic importance.

## **Conclusion**

36. For the reasons given above, I conclude that although the development would not harm the character or appearance of the CA, there would be harm to the living conditions of occupants of neighbouring properties and the setting of adjacent listed buildings. In the absence of public benefits to outweigh the harm the appeal is therefore dismissed.

*R. Gee*

INSPECTOR