



Appeal Decision

Site visit made on 21 January 2025

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2025

Appeal Ref: APP/X5990/W/24/3351064

36 Devonshire Place Mews, London W1G 6DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Carl Wormald against City of Westminster Council.
 - The application Ref is 23/08700/FULL.
 - The development proposed is demolition of existing building and erection of replacement dwellinghouse (Class C3) over ground, first and second floor levels with rear balcony at first floor level.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and erection of replacement dwellinghouse (Class C3) over ground, first and second floor levels with rear balcony at first floor level at 36 Devonshire Place Mews, London W1G 6DD in accordance with the terms of the application, Ref DC/083795, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development provided on the planning application form reads 'Replacement of the existing mews house consisting of an existing ground and first floor with mansard extension and single storey rear outrigger at first floor level. The new construction will reinstate the front and rear elevations and contain a new ground, first and mansard extension with rear outrigger extension. A new terrace is proposed to the rear with a glass balustrade'. The Council changed the description to that in the banner heading above. This description is more precise and accurately describes the proposals as shown on the plans. It was used for the purposes of notification of the application and has been used in the appeal submissions by the appellant. Consequently, I am satisfied that no party will be prejudiced by my use of it in my formal decision above.
3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a delegated report and statement for the purposes of this appeal highlighting a putative reason for refusal. I have had regard to this information in framing the main issue.
4. The National Planning Policy Framework (the Framework) has been updated since the appeal was made. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues in this case are largely unchanged, other than paragraph numbering. I am therefore satisfied that there is

no requirement to seek further submissions on the revised Framework from the main parties, and that no party would be disadvantaged by determining the appeal accordingly.

5. In accordance with the statutory duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act), I have given special regard to the desirability of preserving the listed buildings, 33 to 41 (consecutive) Devonshire Place or their setting or any features of special architectural or historic interest which they possess.
6. In accordance with the statutory duty set out in Section 72(1) of the Act, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Harley Street Conservation Area (CA).

Main Issue

7. The main issue is whether the proposed development would preserve the setting of the Grade II listed terrace 33 to 41 (consecutive) Devonshire Place and preserve or enhance the character or appearance of the Harley Street Conservation Area (CA).

Reasons

Setting of Listed Buildings

8. The Grade II listed block of four/five storey town houses at 33 to 41 Devonshire Place (which includes 36 Devonshire Place (no 36)) sits at the southern end of the longer terraced block of town houses on Devonshire Place and dates from the late 18th Century. Despite some variations in height, the imposing listed buildings retain a strong sense of uniformity in form and fenestration. The List Description refers to a consistent use of rusticated stucco on the ground floor front elevations with brick to upper floors along with a continuous line of decorative cast iron balconies to the first floor and basement lightwells set back behind cast iron railings. Arched entrance doorways of the terraced block include decorative fanlights and sidelights.
9. The appeal property is located immediately to the rear of no 36 and a first floor rear extension at the appeal property has been constructed above a single storey extension forming part of no 36. The evidence indicates the appeal property was a mews building originally used for stabling associated with no 36. There is therefore a close physical and historical relationship between the appeal site and no 36.
10. Neither of the main parties has provided a detailed assessment of significance in relation to the listed buildings, including their setting. The Framework defines the setting of a heritage asset as “the surroundings in which a heritage asset is experienced.” On the basis of what is before me and my own observations, I consider the special interest and significance of the listed buildings is largely derived, from their age, materials, and architecturally uniform and imposing presence in the Devonshire Place street scene. Notwithstanding there is no longer a functional relationship between the appeal site and no 36, the historic connection and close physical relationship between the former principal town house and the former stable/garage mews allow the two types of development to be experienced and appreciated. As such, the appeal site forms an important part of the immediate setting to no 36 and contributes positively to its significance.

Proposals and effects – listed buildings

11. The appeal site is a two storey mid-terraced mews house with a mansard roof extension and a first floor rear extension. The appellant's evidence suggests the appeal property was extended and refurbished in the 1970's leaving only the first floor front elevation and part of the rear ground and first floor brickwork, including an infilled brick archway, as original. The Council do not disagree and on the basis of the information provided and what I saw I have no reason to find otherwise.
12. The existing property would be demolished and replaced with a dwelling of the same dimensions. It would incorporate a mix of contemporary facades and the re-use of original bricks on the elevations. Given the limited surviving fabric of architectural merit and the significant variety of materials and fenestration arrangements within the row of mews properties, the resultant building would not be incongruous in this context. The original brick archway reveal at the rear of the property, formerly associated with no 36, would be lost, however it is currently infilled, not seen in public views, and would be replaced with an archway in the same position with unpainted London stock bricks that would be more reflective of the original elevation.
13. Due to the scale and form of the proposed dwelling, the historical relationship between no 36 and the other listed buildings in Devonshire Place, would remain clearly evident. From Devonshire Place Mews, the much taller main body of the listed buildings no 33 to 41 Devonshire Place would remain dominant.
14. Therefore, the proposal would not significantly or harmfully alter the relationship between the properties or prevent appreciation of the historic reasons for their differing scale and form. Accordingly, the proposal would not detract from the setting and thus the significance of the listed buildings 33 to 41 Devonshire Place.

Conservation Area

15. The CA is primarily characterised by a planned tight-knit and regular grid-layout of streets that contain substantial-sized buildings and terraces of high architectural quality between Regents Park and Cavendish Square. The majority of the buildings are Georgian or Victorian, interspersed with later infills. Although there are a wide variety of uses in the area, it is predominantly residential with few open spaces. To the rear of some opulent terrace rows are mews terraces along narrow streets. These are generally characterised by two-storey buildings which originally related to the principal town house to which they were associated. Most are now dwellings.
16. The step down in scale in relation to the mews properties contrasts markedly with the more imposing houses they once serviced and contributes positively to the history and diversity of the urban townscape.
17. The Council's Supplementary Planning Document '10 Conservation Area Audit, Harley Street', June 2008 (SPD) refers to three character areas within the CA. It describes the Harley Street area, within which the appeal site sits, as forming the largest part of the CA. It states the central grid of streets has a highly formal character with terraces of townhouses of similar scale, occupying consistent narrow plot widths. I also note the SPD identifies many of the mews properties, including the appeal site, as 'unlisted buildings of merit' due to their historic association with principal buildings and their value within the townscape.

18. Although a contemporary commercial block and four storey residential block are located on the opposite side of the narrow Devonshire Place Mews, I see no reason to disagree with the description of the locality and conclude that the historic street pattern, together with grand architecturally designed terraces and intimate mews terraces are key characteristics of, and fundamental to, the appreciation of the CA.
19. From the evidence before me and my observations, insofar as it relates to this appeal, I conclude that the significance of the CA is largely derived from a distinctive urban pattern of predominantly Georgian and Victorian high quality terraces and their associated, lesser scaled mews buildings, interspersed with contemporary buildings and terraces.
20. The appeal property, like most others on Devonshire Place Mews, has been remodelled in the past and includes, amongst other things, painted brickwork, a ground floor bow window, modern garage door, overly-proportioned first and second floor windows and a flat roof rear extension. Despite this, the overall modest composition of the appeal property has been retained, thus it's overall scale and form makes a positive contribution to the significance of the CA.

Proposals and effects - CA

21. As set out above, the appeal property has been substantially altered since it was first built. Evidence indicates the building was separated from its associated host building at no 36 and converted into a dwelling in the 1970's and a mansard roof added. It is suggested that almost all the original internal architectural features and many external features were lost at this time. The Council do not dispute this claim and from what I saw I have no reason to disagree. The features of significance that remain are limited to surviving brickwork on the rear and the first floor front elevations.
22. It is clear that alterations to the building have greatly diminished its worth individually and collectively within the mews terrace in terms of surviving historic fabric and also its architectural appearance. However, almost all other mews properties along Devonshire Place Mews have also been altered in some way, and I note from the evidence and as I saw at my visit that some have been completely re-built. Examples of unsympathetic alterations to mews properties on Devonshire Place Mews and other areas have been highlighted in the SPD as negative features detracting from the character of the CA.
23. Despite the varied elevational treatment, the domestic scale of the mews properties, including the appeal property, remains. The parapet levels, roofline and linear continuity of a fascia application between ground and first floor levels reinforces a uniformity and visual link along the row and is of value to the street scene and the character and appearance of the CA.
24. The proposal would be a replacement dwelling of the same dimensions as the existing dwelling. It would include vertical and horizontally aligned sash windows on the first floor front elevation, timber garage and front doors, a mansard roof finished in natural slate and brickwork to the front elevation would be finished in re-used London stock brick in Flemish bond. The rear elevation would incorporate contemporary fenestration and the first floor outrigger would be rendered with a balcony reinstated. The infilled decorative brick arch at ground floor would also be

re-instated. Internally, the proposed dwelling would be re-arranged in order to maximise light into the property.

25. The objective of Policy 39 of the City of Westminster City Plan 2019-2040, adopted April 2021 (WCP), is to protect and promote Westminster's historic environment. Policy 39 B.2 states that development will secure the conservation and continued beneficial use of heritage assets through their retention and sensitive adaptation which will avoid harm to their significance, while allowing them to meet changing needs and mitigate and adapt to climate change. Furthermore, the SPD advises that the demolition or unsympathetic alteration of unlisted buildings of merit will normally be resisted.
26. As a result of the demolition of the building, the remaining original fabric, that being confined to a small part of the rear elevation and the first floor front elevation brickwork, would not be retained in situ.
27. That being said, the former brick archway on the rear elevation has already been infilled and the brickwork painted. In addition, the original first floor London stock bricks on the front elevation are also painted and bonded by cement mortar. Such treatment is specifically identified at paragraph 5.4 of the SPD as being irreversible and a cause of serious long-term damage to brickwork. The appellant's sustainability report¹ suggests that these bricks would be re-used and inverted so that the natural face of the brick would be visible. Reclaimed traditional London stock bricks would be used on the rear elevation.
28. Policy 39 K of the WCP requires that features that contribute positively to the significance of conservation areas and their settings will be conserved. A key part of the character and thus significance of the CA insofar as it relates to this appeal is the uniformity in scale and form of the mews terrace along with the historic and physical relationship between the grand Georgian terraces and their more subordinate associated mews, rather than the individual architectural quality of the mews buildings. This view is reinforced at Section 7 of the SPD which notes the Devonshire Place Mews *retain their small scale and consistent plot size, the majority are two storeys with a mansard extension and three bays wide. The mews has been converted almost entirely to residential use and this affects its character – applied porches, bow windows and painted brickwork combine to create an impression of picturesque domesticity at the expense of the historic character of a traditional mews.*
29. The limited amount of existing original fabric would be re-used to better effect in the replacement dwelling. Given the changes that have taken place to the appeal building, little of significance would be lost. In particular, the loss of the rear elevation brickwork and the painted first floor brickwork, which is noted as detracting from the historic character of the mews, would not be harmful in the context of the CA as a whole.
30. Furthermore, it is clear that the proposed design features to the ground floor front façade would better reflect the origins of the building and would enhance its appearance. The replacement of unsympathetic mansard tile material with slate and the removal of the inner wall that is currently clearly visible abutting each adjoining parapet/party wall at roof level as well as the use of timber sash windows on the front elevation would also contribute to the visual improvement of the row.

¹ Sustainability Report, syte architects, dated 15 March 2024

31. Features which provide a uniformity to the row such as a parapet and a projecting coping band between ground and first floor would be incorporated into the design of the proposed building. This would be contextually considerate in terms of design and materials. I am therefore mindful that elements of the proposal would result in the replacement of a number of the features identified within the SPD as detracting from the character of the mews with traditional features which would enhance the appearance of the CA.
32. At the rear, facing towards the rear of no 36, the proposed elevation would include contemporary fenestration in the form of larger windows and an obscure glazed balustrade around the balcony, but this would be in the same position as the existing balcony. Given the various altered elevations and extensions at the rear of properties on Devonshire Place Mews and Devonshire Place, these changes would not be harmful to the character or appearance of the CA.
33. From what I saw, I did not consider the existing property to be in a poor condition at my visit. Nonetheless, compelling evidence has been provided by the appellant which demonstrates it would not be possible to undertake significant enhancements to the property without removal of the internal steel structure constructed in the 1970's (and consequential removal of the building) as it underpins the roof construction, as I saw, from all four corners of the existing foundations.
34. On the above basis, I find the overall key feature that contributes positively to the significance of the CA as a whole, that being the underlying scale and form of the appeal property and its historical and visual link with no 36, would be conserved in a manner appropriate to its significance.

Heritage conclusion

35. For the reasons given above, I conclude that whilst the proposal would result in minor fabric loss, from the information before me, it would not in this case, constitute material harm. The proposal would preserve the setting of the listed 33 to 41 Devonshire Place in a manner appropriate to their significance as designated heritage assets. Furthermore, the proposal would not be to the detriment of the overall form and visual appreciation of the mews row. The historical and visual link between no 36 and the appeal site would be retained, which reinforces legibility of the CA's origins and allows its historic association to continue to be appreciated and its character and appearance would be preserved.
36. Accordingly, the proposal would comply with Section 66(1) and Section 72(1) of the Act which taken together require the decision maker to have special regard or to pay special attention to preserving or enhancing listed buildings or their settings, or to preserving or enhancing the character or appearance of conservation areas.
37. The proposal would comply with Policies 38, 39 and 40 of the WCP, which together seek, amongst other things, high quality development that contributes positively to Westminster's townscape and streetscape; development which avoids harm to the significance of heritage assets, while allowing them to meet changing needs and mitigate and adapt to climate change; the conservation of features that contribute positively to the significance of conservation areas; and the replacement of unsympathetic alterations which make a negative contribution to the CA with high quality buildings that would have an improved appearance in the context of the CA and their environmental performance. There would also be compliance with

Section 16 of the Framework which is concerned with the safeguarding of designated heritage assets.

Other Matters

38. I am aware of a representation that infers a young occupant of no 36 suffers from health issues. People within certain age groups have protected characteristics for the purposes of the Public Sector Equality Duty (PSED). Given their health condition, the neighbouring occupant is also a person who shares a protected characteristic for the purposes of the PSED.
39. In my assessment of the effect of the development on neighbouring residents with a protected characteristic, I have therefore had due regard to the PSED contained in Section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
40. Any adverse effects on the health of a child would weigh against the proposal. However, there is no substantive evidence before me to draw the conclusion that allowing the development would threaten the health or well-being of the neighbouring resident. The proposed development would be the same dimensions as the existing building and the level of inter-visibility between the building and no 36 would remain the same as existing. While the demolition and construction process is likely to be disruptive it would be short-term and other legislation could be used to control its effects. Therefore, the development would not result in the significant increased exposure of vulnerable individuals to risk and would not result in significant harm. In view of this, a refusal of permission would not be proportionate and necessary. Allowing this appeal would be consistent with my PSED duty.
41. I have given careful consideration to comments from a neighbouring occupier with regard to the effect of the proposal on their living conditions, including in relation to overlooking from numerous large rear-facing windows and a balcony, light, noise and smoke pollution. However, the Council in their two committee reports² has provided reasons to demonstrate why harm would not arise to neighbours living conditions. I note the original planning application was amended to remove a second floor terrace. On the basis of the information before me and observations at my site visit, I have no compelling evidence to suggest that I should take a different view.
42. I have also had regard to other matters raised by a neighbouring resident, including in relation to soundproofing and noise and dust during demolition and construction. The demolition and construction process would be short-term. Soundproofing issues are dealt with separately and there is no reason to doubt that the proposed building would be subject to current insulation and soundproofing requirements, which would be likely to be more robust than when the property and extension were originally built.

² City of Westminster Planning Applications Sub-Committee dated 11 June 2024 and 1 October 2024

43. Matters relating to the Council's handling of the planning application, compensation in relation to income and completion timescales are not matters relevant to the planning merits of the scheme.

Conditions

44. I have considered the Council's suggested conditions in light of the guidance contained within Planning Practice Guidance on conditions and the Framework. For the sake of clarity and precision, I have amended these as necessary and both main parties have had the opportunity to review the proposed conditions. In addition to the standard condition relating to the time period for implementation, there is a need for a condition specifying the plans to which the permission relates, in the interests of clarity and certainty.
45. I have amended the Council's suggested condition relating to demolition and redevelopment to ensure demolition does not take place until there is some degree of certainty that subsequent redevelopment would proceed. This pre-commencement condition is necessary to comply with paragraph 217 of the Framework and in the interests of the character and appearance of the CA and the setting of the adjacent listed buildings.
46. Pre-commencement conditions are required for demolition, piling and construction works as well as energy efficiency and environmental sustainability measures to ensure appropriate management of these phases at an early stage, to protect neighbouring living conditions, to ensure details are available to contractors before work commences, and to address the effects of climate change and secure appropriate energy measures are embedded at an early stage of construction. I have not included measures relating to the provision of an electric vehicle charging point as this would be covered by other legislation. The appellant has not objected to the inclusion of these pre-commencement conditions.
47. Details of sound insulation between those parts of the proposed dwelling and adjoining properties are required to protect the living conditions of neighbouring residents, particularly as the proposed first floor rear outrigger would be located directly above a single storey extension of an adjoining property.
48. Conditions requiring details of external materials, windows and door specifications are reasonable and necessary to protect the character and appearance of the CA. I consider the inclusion of the Council's suggested conditions requiring cycle and waste storage are provided on the site prior to occupation of the dwelling are necessary to ensure waste is kept within the confines of the property and to ensure future occupiers are encouraged to travel sustainably.
49. A condition requiring a privacy screen is provided to the first floor balcony is necessary to protect the living conditions of neighbouring residents. The Council's suggested condition regarding roof materials is not necessary as this is included within proposed condition 8.

Conclusion

50. For the reasons set out above the appeal should be allowed and planning permission should be granted subject to the conditions listed.

A Veevers

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Location Plan
Drawing Ref: 336.201/2 (ground and first floors demolition)
Drawing Ref: 336.203/4 (second floor and roof demolition)
Drawing Ref: 336.210 (front elevation demolition)
Drawing Ref: 336.211 (rear elevation demolition)
Drawing Ref: 336.220 (sections demolition)
Drawing Ref: 336.221 (sections demolition)
Drawing Ref: 336.301/2 (ground and first floors as proposed)
Drawing Ref: 336.303/4 (second floor and roof as proposed)
Drawing Ref: 336.310 (front elevation as proposed)
Drawing Ref: 336.311 (rear elevation as proposed)
Drawing Ref: 336.320 (sections as proposed)
Drawing Ref: 336.321 (sections as proposed)
- 3) No demolition shall take place until arrangements have been put in place to secure the redevelopment of the site permitted under this planning permission and details of these arrangements have been submitted to and approved in writing by the local planning authority. The arrangements shall include details of the timescale for carrying out the redevelopment approved under this permission. The development shall be implemented in accordance with the approved details.
- 4) No development, shall take place until evidence to demonstrate that any implementation of the scheme hereby approved, by the applicant or any other party, will be bound by the council's Code of Construction Practice prior to the commencement at each stage of any:
 - (a) demolition, and/or,
 - (b) earthworks/piling and/or,
 - (c) constructionhas been submitted to and approved in writing by the Local Planning Authority.

Such evidence must take the form of the relevant completed Appendix A checklist from the Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Sciences Team, which constitutes an agreement to comply with the Code of Construction Practice and requirements contained therein.
Commencement of the relevant stage of demolition, earthworks/piling or construction shall take place in accordance with the approved details.
- 5) Piling, excavation and demolition works shall take place only between 08.00 and 18.00 Monday to Friday and not at all on Saturdays, Sundays, Bank holidays or Public holidays.
All other construction works shall take place only between 08.00 and 18.00 Monday to Friday and 08.00 and 13.00 on Saturday and not at all on Sundays, Bank holidays or Public holidays.

- 6) No development shall take place until details, including a programme of implementation, of the following energy efficiency measures have been submitted to and approved in writing by the Local Planning Authority:
- use of cross laminated timber;
 - air source heat pump;
 - photovoltaics;
 - natural wool fibre insulation
- The development shall be implemented in accordance with the approved details for each of the above measures before the dwelling hereby permitted is occupied and retained thereafter.
- 7) No above ground works shall take place until a scheme for sound insulation between the dwelling and adjoining neighbouring buildings has been submitted to and approved in writing by the Local Planning Authority. The scheme shall ensure residents in the adjoining buildings are protected from noise of not more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night. The sound insulation works shall be completed before the dwelling hereby permitted is occupied and retained thereafter.
- 8) Notwithstanding the information shown on the submitted drawings, no above ground development shall take place until a detailed schedule and annotated elevation and roof plans, of all proposed materials of external construction, including glazing, has been submitted to and approved in writing by the local planning authority, and samples have been made available for inspection. The development shall not be occupied until the development has been completed in accordance with the approved schedule and materials.
- 9) Notwithstanding the information shown on the submitted drawing, no above ground development shall take place until detailed drawings of windows and doors (including their method of openability) with elevations, plans and sections scaled at 1:10 have been submitted to and approved in writing by the Local Planning Authority. The windows and doors shall thereafter be installed in accordance with the approved details.
- 10) The dwelling hereby permitted shall not be occupied until secure cycle storage has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle storage shall be kept available for cycle use only.
- 11) The dwelling hereby permitted shall not be occupied until the separate stores for waste and materials for recycling shown on drawing number 336.301/2 have been provided and clearly marked for use of occupants. The waste and recycling store shall be kept available for occupants thereafter.
- 12) The privacy screen to the first-floor balcony as shown on the approved drawings shall be installed before occupation of the dwelling hereby permitted and thereafter permanently maintained.

END