



Appeal Decisions

Site visit made on 20 May 2025

by **K Stephens BSc (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal A Ref: APP/P4605/W/24/3353815

36-36A High Street, Sutton Coldfield, Birmingham, B72 1UP

- 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 4seasons Investments Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/04347/PA.
 - The development proposed is the change of use of 1st and 2nd floor to residential.
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Appeal B Ref: APP/P4605/Y/24/3353818

36-36A High Street, Sutton Coldfield, Birmingham B72 1UP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by 4seasons Investments Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/04359/PA.
 - The works proposed are change of use of 1st and 2nd floor to residential.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. Based on the official listing¹ description and statutory address, the appeal building is officially known as “Cull’s House, 36 High Street”. However, on the submitted location plan the red line goes around the building shown as 36-36A. On my visit I saw that the shopfront on the left hand side of the central front door to the building (when facing) was numbered 36a and the right hand side shopfront was numbered 36b. The listing description² for “36A and 38 High Street” clearly refers to the adjacent building to the left of Cull’s House. The listings for both buildings state that “Nos. 36, 36A and 38 form a group”.
4. For the appeal site address in the headings above I have used 36-36A High Street, as this is shown on the location plan and used by the Council in its decision notices and by the appellant on the appeal forms, notwithstanding the statutory address on the listing description.
5. Since the appeal was made, a revised National Planning Policy Framework (the Framework) has been published³. The document has not raised any new matters which are determinative to this appeal, hence I am satisfied that neither party would

¹ National Heritage List for England: list entry number 1116389

² National Heritage List for England: list entry number 1075833

³ 12 December 2024

be prejudiced by my consideration of the revised Framework in reaching my decision.

6. As the proposal relates to a listed building within a conservation area, I have had special regard to sections 16(2) and 66(1) and paid special attention to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
7. The appellant submitted a Noise Impact Assessment with the application. The Council expressed concerns that this did not cover the weekend and late evening. A Residential Noise Assessment (the RNA)⁴ has been submitted with the appeal. It is dated November 2023, which is after the applications were refused, and covers a weekend period. During the appeal the appellant has also submitted plans showing the locations where proposed mechanical ventilation heat recovery (MVHR) units would be installed.
8. The Procedural Guide: Planning appeals - England⁵ states that the appeal process should not be used to evolve a scheme and that in general, appeals are determined on the same basis as the original application. Therefore, the appellant's submissions should not normally include new evidence or additional technical data not previously seen by the Local Planning Authority and interested parties at the application stage - the appellant may open themselves up to an award of costs if new evidence that could have been anticipated as being relevant to the assessment of the planning application is submitted with the appeal.
9. That said, it is not unreasonable for any party to seek to resolve a reason for refusal through the appeal process and to submit additional information to do so. The Council has had the opportunity to review the findings of the noise report and comment on the MVHR units. The documents should also have been uploaded and made available on the Council's website for any interested parties to view. I am satisfied the additional information does not fundamentally change the applications and does not result in procedural unfairness. Therefore, I am inclined to accept the RNA and the plans showing the location of the MVHR units.
10. The two appeals concern the same scheme under different, complementary legislation. I have therefore dealt with both appeals together in my reasoning to avoid unnecessary duplication.

Main Issues

11. In light of the above the main issues in these appeals are:

- For Appeals A and B: Whether there are sufficient details of the proposed mechanical ventilation system and whether it would preserve the Grade II listed building known as Cull's House, 36 High Street, its setting, or any features of special architectural or historic interest which it possesses.
- An additional main issue for Appeal A is whether the proposal would provide acceptable living conditions for future residents with particular regard to noise.

⁴ Undertaken by Nova Acoustics

⁵ Last updated 17 September 2024

Reasons

Living conditions

12. The proposal would create 3 flats on the upper two floors of the building and retain the retail units on the ground floor - at the time of my visit one was a barbers, the other was the local MP's office. The building is located in a row of buildings along the High Street in the town centre. Close by, on the opposite side of the road, are two late night entertainment venues – The Three Tuns and The Townhouse.
13. The proposed flats are a noise-sensitive form of development. The RNA shows that there is noise break out from the nearby entertainment venues, which are open until 1am and 3am respectively, with noise present around the entire site. The Framework advises that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established, and that the applicant (or the 'agent of change') should be required to provide suitable mitigation before the development has been completed. The Framework also expects development to be well designed and promote health and well-being with a high standard of amenity.
14. If the windows along the front façade were open the RNA finds that the local entertainment noise would be audible inside the property. To achieve reasonable internal noise levels would rely on windows being closed, enhanced glazing and alternative ventilation strategies. The existing single pane windows would need to be retained as the building is listed. Secondary glazing would therefore need to be installed. The RNA concludes that the only option available, to guarantee that any noise outbreak is appropriately controlled, is to force windows to be closed, or seal them up, such that future occupants would not be able to open them. A continuously running mechanical ventilation system would need to be employed to provide sufficient extraction and supply clean air for ventilation.
15. The first floor flats would have their bedroom windows on the front elevation of the building overlooking the street and close to the noise sources from the nearby entertainment venues. Flat 3 on the second floor would have all its habitable rooms (bedroom and combined living/kitchen/dining room) facing the front and the noise sources.
16. Permanently sealed non-openable windows would mean future occupants would not be able to have fresh air if they wanted it or even open the windows for a ventilation purge – this would be particularly the case for Flat 3 where every window would be sealed. Sealed windows would not provide a satisfactory living environment for future occupiers. This would result in undesirable amenity impacts on the living conditions of future occupants that would affect their quality of life, regardless of whether the occupiers were aware of non-openable windows on choosing to live in the flats.
17. Accordingly, the proposed development would be contrary to Policy PG3 of the Birmingham Development Plan 2017⁶ and Policies DM2 and DM6 of the Birmingham Plan 2031⁷. Collectively these seek to ensure that development is of a high design and provides attractive environments, that development is designed,

⁶ Birmingham Plan 2031 adopted January 2017

⁷ The Development Management in Birmingham DPD adopted December 2021

managed and operated to reduce exposure to noise and that it does not result in unacceptable adverse impacts on the living conditions of occupiers.

Mechanical ventilation

18. The Grade II listed building is a 3 storey 18th century red brick house, although according to both the Council and the appellant's Heritage Statement the façade conceals an older building behind, possibly 16th or 17th century. The building façade has a number of decorative features such as stone dressings, sash windows under keystones with slanting drip moulds, a central door with Doric pilasters, and rusticated Doric end pilasters with entablatures. It forms a group with the adjacent properties 36A and 38 High Street, which contains a number of attractive buildings. Although I was unable to get inside the building, the submitted evidence and photographs mention a very fine 18th century staircase, an even earlier 17th century one and numerous examples of timber framing, fireplaces and decorative plaster work.
19. From the submitted evidence the building's special interest and significance are largely derived from its architectural and historic interest as an example of a high status town house owned by the Sadler family and part of the architectural quality of the High Street. The building's age, surviving historic fabric and use of traditional materials and construction make important contributions in these regards.
20. As described above, the need to seal windows to achieve acceptable noise levels would require the installation of MVHR units. The appellant proposes to install a standalone 'Ecostream Prana' unit for bedroom 2 of Flat 1. The plans indicate this would exit into the arched area to the side of the building. When it is not feasible to use a through-wall option, such as in the bedroom of Flat 2 on the first floor and Flat 3 on the second floor, the appellant advises that a Vent-Axia unit would be used. The plans indicate these would also penetrate through the rear roof slope.
21. However, there are no details or brochures of any of the units and their specifications and dimensions, no plans or large-scale details or sections showing how they would be fitted and any architectural or historic features that would be impacted. Nor are there plans showing how the units would penetrate the roof and what would be visible on the roof slope.
22. I have considered whether I could impose conditions controlling these details. However, in my view the omitted information is vital to understanding what is proposed and any effects they may have on the special interest and significance of the listed building. The lack of information and uncertainty means it would not be acceptable to leave such matters to condition.
23. In the absence of adequate details I am, therefore, unable to make any meaningful assessment of the potential effects of the proposed works and whether they would preserve the Grade II listed building or any features of special interest and significance which it possesses. Consequently, I am unable to determine whether the proposed works would meet the requirements of the Act, comply with the provisions of the Framework or comply with Policies PG3 and TP12 of the Birmingham Development Plan 2017.

Other Matters

24. The listed building is located within the Sutton Coldfield Conservation Area (the SCCA), which is centred on the High Street. There is a mix of residential and commercial premises, including some streets of terraced properties to the west, with a variety of period properties displaying a mix of designs, sizes, ages and uses. Hence, the character and appearance of the SCCA, and thus the special interest and significance, are in part derived from the architectural richness and variety of its historic buildings that reflect the economic and social development and growth of Sutton Coldfield over time. The listed building is a prominent part of the street scene and important component of the townscape within the SCCA. Its heritage merit as well as its aesthetic charm means that it positively contributes to the character and appearance of the SCCA as a whole and thereby to its significance as a designated heritage asset.
25. The change of use of the upper two floors from offices into residential use would not involve external alterations to the front of the property and the change back to residential would see a previous use reinstated in the High Street. The proposal would preserve the character and appearance of the SCCA, and the significance of the SCCA would not be harmed. The Council has raised no concerns in this regard.

Planning Balance

26. The Council is unable to demonstrate a 5 year supply of deliverable housing land such that paragraph 11d) of the Framework is engaged. The provision of 3 flats would help reduce the Council's housing deficit and accord with one of the Framework's aims of boosting housing supply, but this would be modest due to the scale of the proposal. The proposed flats would be in an accessible town centre location that would reduce reliance on the car and help climate change. The proposal would also bring a partly vacant building back into active use. There would also be some short-term economic benefits from employment during the conversion into flats and modest longer-term benefits arising from future spend in the area.
27. However, in the absence of adequate details for the MVHR system I am unable to make any meaningful assessment of the potential effects of the proposed works and whether they would preserve the Grade II listed building or any features of special interest and significance which it possesses. The Framework advises that heritage assets are a finite resource and that great weight is given to the asset's conservation. In light of this, footnote 7 of the Framework provides a strong reason for refusing the proposal to a designated heritage asset. Furthermore, I have also found there would be lasting harm to the living conditions of future occupiers of the property. This would weigh against the environmental and social aims of the Framework of promoting good design with a high standard of amenity.
28. I therefore conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits I outline above when assessed against the policies in the Framework taken as a whole.

Conclusion

29. **Appeal A:** For the reasons above the proposal would conflict with the development plan when taken as a whole and there are no material considerations that outweigh this conflict. Appeal A should be dismissed.
30. **Appeal B:** For the reasons given above, Appeal B should be dismissed.

K. Stephens
INSPECTOR