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## Appeal Decision

Site visit made on 24 June 2025

by **A Tucker BA (Hons) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 21 July 2025

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**Appeal Ref: APP/K5600/W/24/3354874**

**39 Harrington Gardens, London SW7 4JU**

- 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 J Woolf against the decision of the Council of the Royal Borough of Kensington and Chelsea.
  - The application Ref is PP/23/07933.
  - The development proposed is installation of air conditioning condenser unit on lead flat roof above third floor on eastern side of building. Unit to be enclosed by an acoustic panel wall system to conceal the unit. Enclosure to be finished in grey galvanised steel.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs was made by Mr J Woolf against the Council of the Royal Borough of Kensington and Chelsea. This application is the subject of a separate decision.

### Preliminary Matters

3. On 12 December 2024 the Government published its revised National Planning Policy Framework (the Framework). Its content relative to the main issue of the appeal is largely unchanged. It has not therefore been necessary to give the parties opportunity to comment on the revisions.
4. The Council adopted the Local Plan 2024 on 24 July 2024, after it refused the application subject of this appeal. The appeal timetable has allowed the parties to address this matter.
5. A noise impact assessment<sup>1</sup> (NIA) was submitted with the appeal. The appellant had intended to submit this with the application, and it was referred to in the covering letter submitted to the Council.
6. However, I need to consider whether to accept this as part of the appeal. Caselaw establishes a substantive test and a procedural test. Regarding the substantive test, the NIA provides further evidence associated with the proposal, but it does not seek to alter or amend it. Using the Council's terminology, it is more akin to a minor rather than significant revision. I am therefore satisfied that it passes the substantive test.

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<sup>1</sup> 39 Harrington Gardens, London SW7 4JU Plant Noise Impact Assessment Environmental Equipment Corporation Ltd Ref AO/EC20165-4 Version 1 dated 23 October 2023

7. With regard to the procedural test, given that the NIA does not seek to amend the scheme, and that various consultee comments refer to it anyway as the same report was submitted with another application, I can be satisfied that procedural unfairness would not occur. Therefore, both tests are satisfied, and no party would be prejudiced if I take the NIA into account.
8. A different approach was taken in the appeal at Abbotsbury Close<sup>2</sup>. The issues are similar, in that the proposal was for an externally mounted air conditioning unit. However, the details submitted at appeal were more significant and evolved the scheme. In the appeal case before me the NIA was already in the public domain and sought to supplement the proposed scheme rather than amend or evolve it.
9. During the appeal the Council was invited to provide comments on the NIA. It confirmed that it found the NIA satisfactorily address the matters it had raised, subject to the imposition of conditions. On this basis, the third reason for refusal is no longer a matter of dispute between the parties and the effect of the proposal on the living conditions of those who live nearby does not need to be a main issue of the appeal.
10. The internal arrangements necessary for the proposed air condition system that are referred to in the Council's second refusal reason are beyond the scope of a planning application. An application for listed building consent for the proposal was also refused. An appeal against that refusal was submitted but has been withdrawn.
11. The description of the development was amended, and this was agreed by the appellant. I have used the amended description in the banner heading above.

### **Main Issue**

12. The effect of the proposal upon the significance of the grade II\* listed building known as 39 Harrington Gardens<sup>3</sup>, and whether the proposal would preserve or enhance the character or appearance of the Courtfield Conservation Area (CCA).

### **Reasons**

13. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
14. The appeal building is part of a group of similar buildings, and is the most theatrical and visually interesting of the group, which reflects the character and profession of its original owner. Its significance is multi-faceted. This includes its considerable architectural interest, resulting from its unique and flamboyant appearance, which includes an elaborate arrangement of decorative architectural features with a broad stepped gable form to the front that contains the three upper storeys.

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<sup>2</sup> Planning Inspectorate Ref: APP/K5600/W/23/3316681

<sup>3</sup> List Entry Number: 1080621

15. In terms of historical interest, it was designed by renowned architects Ernest George and Harold Peto and built for the dramatist W. S. Gilbert, of Gilbert and Sullivan fame. The building also has architectural interest that is derived from its rich decorative elements and associations with its original owner.
16. The building stands within the CCA. The Council's Conservation Area Appraisal<sup>4</sup> (CAA) advises that the area was generally laid out between 1870 and 1900. The area includes two broad styles. The first was the buildings designed in the Italianate style, with yellow brick and rusticated stucco. The second slightly later phase was a reaction against this earlier style and saw more ornate red brick buildings with inventive skylines, irregular facades and terracotta ornamentation. The appeal building is one such building and is mentioned in the CAA as part of the most elaborate of these developments. The high architectural quality of its buildings, which in many cases are striking and unusual, and are enhanced by a setting of mature green spaces and tree lined roads, are the defining characteristics of the CCA that contribute to its character and appearance.
17. The proposal would see an air conditioning unit with an acoustic enclosure positioned on an area of flat roof, that is broadly level with the top floor. The appellant accepts that the proposal would be visible from Harrington Gardens to the north. It would be seen in the context of an expansive roof. The slopes are punctuated by rows of modestly detailed dormers. The roof of the building, as is the case with most of the building's exterior, is largely unaltered. Its carefully considered form and unusual scale that spans three floors are distinctive characteristics of the building that are seen in the context of the flamboyant front gable.
18. The view of the unit would be limited as it would be set back from the road and hidden on one side by the front gable and to the other side by the large east facing chimney. Yet, where it would be visible it would be entirely at odds with what is otherwise the carefully conceived and largely original exterior of the building. The flat exterior surface of the enclosure would have a bland appearance in the context of the fine grain of the surrounding brick and tiles. Furthermore, during the winter a broader view of the area of roof beyond the front gable would be achieved from the gardens opposite, when the trees are not in leaf. The appellant suggests that the enclosure could be painted a different colour, but I am not convinced that an alternative colour would lessen the proposal's impact.
19. The private gardens to the south are dominated by mature trees and other vegetation. There would be some visibility of the proposed structure from ground level where gaps in tree canopies allow, and where glimpsed it would appear similarly out of place in the context of the architectural quality of the building. Furthermore, there are numerous elevated positions from neighbouring buildings where the appeal building can be viewed, and the level of visibility would increase in the winter when the garden's deciduous trees are not in leaf as illustrated by the Council's photos. Given the high level of thought that has gone into the building's design it is highly likely that views from the elevated floor levels of buildings nearby would have been considered by the building's original architects, as well as the views of the building from the ground.

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<sup>4</sup> Courtfield Conservation Area Appraisal 2015

20. For these reasons the proposal would harm the significance of the listed building. The level of harm would however be modest, given the size of the proposal in the context of the building, yet not so modest that its impact would be neutral as it would affect the building's architectural significance, which is reported to be very high in the national context. The architectural significance of the building is also a key component of the CCA. It therefore follows that the proposal would fail to preserve the character and appearance of the CCA. The level of harm would however be very modest given the proposal's small scale.
21. In terms of the Framework the harms would be less than substantial but would nevertheless be of considerable importance and weight. Paragraph 215 of the Framework establishes that any harm should be weighed against the public benefits of the proposal.
22. The benefits that would arise from the proposal are private. In terms of the clear and convincing justification required by paragraph 213 of the Framework there is nothing before me to advise why the unit is considered necessary or why this location and the detail of the design are the most appropriate. Therefore, the harm identified would not be outweighed by any public benefits.
23. In summary, the proposal would fail to meet the requirements of the LBCA as it would harm the special interest of the listed building and fail to preserve the character and appearance of the CCA. It would fail to accord with Policies CD1, CD2, CD4, CD5 and CD15 of the Local Plan 2024. Together these seek to ensure that proposals respect existing context, are of a high standard of design, preserve or enhance the character or appearance of a conservation area, preserve the special interest of listed buildings, and protect views.

### **Other Matters**

24. The Local Plan 2024 introduced Policy GB5 regarding overheating and Policy CD16 regarding fire safety. They would appear to have implications for the proposal, however as I am dismissing the appeal for other reasons these are not matters that I need to consider further or elevate to become a main issue of the appeal.

### **Conclusion**

25. For the reasons given above the appeal should be dismissed.

*A Tucker*

INSPECTOR