



Appeal Decisions

Hearing held on 11 June 2025

Site visit made on 11 June 2025

by **C McDonagh BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th August 2025

Appeal A Ref: APP/X5990/W/25/3361064

26 Leinster Square, City of Westminster, London W2 4NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Hyde Park Serviced Apartments Ltd against the decision of City of Westminster Council.
 - The application Ref is 24/02812/FULL.
 - The application sought planning permission for 'use as a large HMO (sui generis use) and associated external and internal alterations' without complying with conditions attached to planning permission Ref 21/04569/FULL, dated 21/11/2021.
 - The conditions in dispute are Numbers 1 and 2 which state that:
Condition 1 – *the development hereby permitted shall be carried out in accordance with the drawings and other documents listed in this decision letter, and any other drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.*
Condition 2 – *the large HMO use allowed by this permission must not begin until all of the external works have been completed and the communal facilities comprising of; communal kitchen with cooking and storage facilities (ground floor); communal lounge (ground floor); communal laundry with washing and ironing facilities (3rd floor); cycle storage to front basement and communal garden (rear ground floor) have been provided, are ready for use and accessible to all occupants of the building. Thereafter the communal facilities shall be retained, maintained and available and accessible for all occupants of the building.*
 - The reasons given for the conditions are:
Condition 1 – *for the avoidance of doubt and in the interests of proper planning.*
Condition 2 – *to make sure that the development is completed and used as agreed, and to make sure that it meets policy 10 of the City Plan 2019 – 2040.*
-

Appeal B Ref: APP/X5990/Y/25/3361069

26 Leinster Square, City of Westminster, London W2 4NQ

- 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 Hyde Park Serviced Apartments Ltd against the decision of City of Westminster Council.
 - The application Ref is 24/02914/LBC.
 - The works proposed and existing are described as 'Minor internal and external alterations to scheme granted Listed Building Consent under reference 21/04570/LBC'.
-

Decision

1. Appeal A is allowed, and planning permission is granted for 'use as a large HMO (sui generis use) and associated external and internal alterations' at 26 Leinster Square, City of Westminster, London W2 4NQ in accordance with the application Ref 21/04569/FULL without compliance with conditions number 1 and 2 and subject to the conditions as set out on the attached schedule.

2. Appeal B is allowed in part, and listed building consent is granted for the works described as 'Minor internal and external alterations to scheme granted Listed Building Consent under reference 21/04570/LBC' at 26 Leinster Square, City of Westminster, London W2 4NQ insofar as it relates to the following:

On the ground floor, the removal of the modern partition in the hallway; on the first floor, the removal of the modern staircase adjacent the anteroom and creation of a cupboard space; and all internal works proposed and existing to the basement, 3rd and 4th floors.

In accordance with the terms of the application Ref 24/02914/LBC and subject to the conditions in the attached schedule.

Appeal B is dismissed for all other works.

Preliminary Matters

3. At the hearing it was clarified that most elements of the scheme have already been carried out and are therefore assessed on a retrospective basis, while some are proposed. The appeals concern the same proposals/development at the same site submitted under separate legislation. For expediency and to avoid duplication, I have dealt with both appeals in the same decision letter.
4. On 12 December 2024, the Government released an updated version of the National Planning Policy Framework (the Framework). Although this was after the decisions subject to these appeals were issued, the appeal submissions were made after this date and both main parties have had the chance to discuss the changes to the Framework in both written and oral submissions prior to the decisions made herein.
5. The submitted floor plan drawings¹ which accompanied the applications subject to the appeals omitted the lobbied entrance with post boxes for residents which was considered necessary. This was included to ensure the security and living conditions of occupiers of the building following the advice of the Metropolitan Police's Designing Out Crime officer. At the hearing and in their written submissions, the appellant advised that this was a drafting error and an amended plan² was therefore submitted with the appeal to address this. The Council has raised no objections to the plan being considered insofar as it relates to the lobby area.
6. The Planning Appeals: Procedural Guide (the PG) sets out that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority (the LPA) and by interested parties at the application stage. The PG goes on to state that in deciding whether to, exceptionally, accept the proposed amendment, as per the judgement in Holborn³, which refined the 'Wheatcroft principles'⁴, consideration must be given to the following two tests which must be assessed separately: 1) substantive test; and 2) procedural test.
7. The substantive test is whether the proposed amendment involves a 'substantial difference' or a 'fundamental change' to the application that would ultimately result

¹ Drawing: 122.300 Revision P1

² Drawing: 122.200 Revision P2 - 17th February 2025.

³ Holborn Studios Ltd v The Council of the London Borough of Hackney (2018)

⁴ Bernard Wheatcroft v Secretary of State for the Environment (1982)

in a 'different application.' A 'substantial difference' or a 'fundamental change' could also be as a result of a series of small, incremental changes to a scheme. If it is concluded that the amendment would result in a 'different application', then it is unlikely that it could be considered as part of the appeal. The procedural test is whether, if accepted, the proposed amendment would cause unlawful procedural unfairness to anyone involved in the appeal and, if so, whether such unfairness could be cured, for example by re-consultation.

8. On substantive grounds, the lobby was already part of the 2021 application and as such it would not be a fundamental change to the proposal that would ultimately result in a different application. Notwithstanding the assessment of the scheme below, the lobby being added back in to the floor plans would not be contrary to the substantive test.
9. In terms of the procedural test, the Council has previously approved the same concept of a lobby while the key consultee, the Met Police, advised on this matter. I therefore do not consider that accepting the amended plan would constitute procedural unfairness. I have therefore determined the appeal including the amended floor plan above for the avoidance of doubt.
10. At the hearing, it was requested by the appellant that if the appeal relating to the refusal of listed building consent could not be allowed in full, a split decision allowing other elements which are acceptable instead be considered. Those aspects of the scheme which are not in dispute, which I have agreed preserve or would preserve the listed building, are therefore confirmed in the decision paragraph.

Background and Main Issues

11. The appeal site clearly has a complex planning history. Of recent note are a public inquiry pursuant to appeals relating to 3 enforcement notices⁵ issued by the local planning authority relating to various unauthorised works to the listed building; and applications for planning permission and listed building consent⁶ ('the 2021 applications') to convert the property into a House in Multiple Occupation (HMO) with the associated works to the listed building. It is following unauthorised works and proposed amendments to the latter schemes that the refused applications subject to these appeals are based upon.
12. The main issues are therefore as follows:
 - For Appeal A – the effect of amending conditions 1 and 2 on the living conditions and security of occupants of the HMO.
 - For Appeal B – whether the retrospective and/or proposed works preserve/would preserve the Grade II listed building, or any features of special architectural or historic interest which it possesses.

⁵ Appeals References: APP/X5990/F/19/3221032, APP/X5990/F/19/3221042 & APP/X5990/F/19/3221043

⁶ Application References: 21/04569/FULL & 21/04570/LBC

Reasons - Appeal A

Living Conditions

13. As part of the applications for the unauthorised and proposed changes to the layout of the building for its use as a HMO, the plans as proposed drawing included an amended configuration of communal facilities. However, it omitted a lobbied entrance at ground floor level which included individual post boxes for each occupant of the HMO. This lobby was originally included to address the concerns of the Metropolitan Police's Designing Out Crime Officer during the 2021 applications and subsequently formed part of those approved plans.
14. Having discussed this at the hearing, and as included within the appellant's written submissions prior to the event, it was explained that this was a drafting error on the submitted drawings. The appellant has submitted an amended plan which includes the lobby to rectify this. Notwithstanding my assessment of Appeal B, it was agreed at the hearing that subject to confirmation that the lobby was not yet in situ, this could be acceptable. It was clarified that in principle, and notwithstanding the assessment of Appeal B, that the changes to room layouts and inclusion of the omitted lobby would be acceptable.
15. As such, and notwithstanding my assessment of Appeal B, amending the conditions by replacing the floor plan in the manner proposed would ensure the security and therefore suitable living conditions of occupiers of the HMO. This would accord with policies 12 and 38 of the City Plan 2019 – 2040 (CP) which seeks to ensure that all development will place people at the heart of design, creating inclusive and accessible spaces and places, introducing measures that reduce the opportunity for crime, among other things.

Reasons - Appeal B

Special Interest and Significance

16. As decision maker, I have a statutory duty under Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) in considering whether to grant listed building consent for any works, I shall 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.
17. The appeal property forms part of the Grade II listed⁷ '23-26, Leinster Square W2', which comprises terraced houses fronting Leinster Square. The houses are 4 storeys with convex stucco frontages and projecting doric porches. Other notable features include the continuous iron bombe balconies which cover each frontage and alternating square and round headed windows from first to fourth floor levels.
18. I have had regard to the appellant's Heritage Appraisal⁸ (HA) and Heritage Statement of Case⁹ (HS). Based on all that I have seen and read I consider the special interest and significance of the listed building is derived from its historic and architectural interests. This includes the building's age; its value as a surviving example of 19th century domestic architecture; its relationship to the area and its evolution during the rapid expansion of London in the 1800s; the historic uses of

⁷ List Entry Number: 1221947

⁸ The Heritage Practice – December 2023

⁹ The Heritage Practice – February 2025

the building which reflect societal needs of the time; and its striking façade and symmetry with other dwellings in the listing. Of particular relevance to this appeal is the legibility of its historic planform, surviving historic fabric, and the retained formal hierarchy within its internal floors and rooms.

Effects of the Proposal

19. The agreed Statement of Common Ground (SoCG) articulates the areas of disagreement between the main parties. Those elements of the scheme which are considered harmful are comprised of existing installed kitchen units in the front rooms on the ground, first and second floors and bathroom pods in the rear rooms of the ground and first floors.
20. The front room of the ground floor is a large space with high ceilings and an ornate fireplace reflecting its standing as a principal room within the property. This would likely have been used as a reception space for entertaining guests or the primary room for day-to-day family time. The kitchen 'pod' installed occupies a large area and while its height falls below that of the ceiling and its cornicing, it is nevertheless intrusive and harmfully interrupts the planform of the room. While it does not physically conflict, it visually overwhelms historic features such as the fireplace. Moreover, at the time of my visit the pod was covered in a white gloss type finish which was overtly modern in its design. Although I was informed that it is intended that the pod will be clad in a wood composite cladding, this was not the situation at the time and there are no plans before me to indicate how this would appear.
21. The ground floor room to the rear was approved as a bathroom but at the time of my visit was a bedroom and included a similar pod concept, albeit one which includes a toilet, shower cubicle and hand sink. A drawing is included for this which shows the pod clad in a timber veneer, although as with the kitchen pod this was not the situation at the time of my visit. The walls of the pod were plastered and painted in accordance with the rest of the room which made it appear contrived and intrusive rather than a separate element which is more obviously a 'pod'. This has also harmfully interrupted the plan form of the room.
22. I am directed to the consented scheme which included a partition to the rear of the rear room which in turn created a space for the communal kitchen on the other side. This partition would have also provided the requisite privacy for the bathroom created in the rear room under that application. It is now proposed to remove this wall which it is argued would restore the planform of the room and allow natural light into the space. While I agree this would be beneficial insofar as it would restore part of the planform of the room, this would not be compatible with an open bathroom as consented while it would also necessitate the retention of the pod for privacy in its continued use as a bedroom. In this regard, the reinstatement of part of the planform comes at the expense of losing another section of it. Frankly, neither scenario is completely beneficial, although on balance the large and intrusive bathroom is to my mind more harmful than the existing partition to the rear of the room.
23. This situation is largely repeated at first floor level, with the kitchen and bathroom structures located in ostensibly the same positions in the front and rear rooms with similar material finishes. While the hierarchy of floors would place the first-floor rooms lower in terms of their importance and historic uses, the pods would

nevertheless also be intrusive and harmfully interrupt the plan form of both rooms. As with the ground floor, the removal of a partition would be beneficial on one hand while also necessitating the retention of the bathroom pod on the other. As with the ground floor, I do not consider this a betterment of the situation and as such I cannot conclude that this would be on balance a benefit of the scheme.

24. Although not referenced in the matters not in agreement section of the SoCG, the Council has articulated its reasons for refusal which relate to the kitchen pod at second floor level to the front room, while this is addressed in the HS. In this regard, the 2021 applications approved a bathroom unit and kitchen area on the western wall. The front of the kitchen unit was set back from the wall of the bathroom, and while it adjoins the front wall of the property in the submitted plans subject to appeal, it is largely what was approved in 2021. However, as with the other units it is evident that the heights and materials of the kitchen pods were not agreed prior to installation in the form of a condition. There is a frustrating lack of detail in this matter, and while this may have been left as a matter of good faith, as the Council highlighted at the hearing, I can only assess what is before me. The unit is a large intrusive feature, wider than consented and reaches a significant height. Regardless of whether it reaches the ceiling, there would be little of the west wall visible while also further eroding the plan form of the room.
25. At the hearing, it was clarified that the works which have taken place or that are proposed at basement level, the remaining elements of the second floor and all those at third and fourth level are acceptable. Based on all that I have seen and read, I don't consider that the works to these areas, including amended room layouts in the basement, to create an additional room at third floor level, or the communal kitchen are, or would be, harmful to the special interest of the listed building.
26. There is reference to the 'installation of a metal escape staircase in the rear basement lightwell'. However, this is not indicated on the submitted plans, including the amended floor plan showing the lobbied entrance and while the Council seemingly do not take issue with this element of the design, there is nothing before me to detail how this is attached to the building and any impact of the staircase on the listed building. As such, I cannot be certain this would preserve the listed building, although I note that there are seemingly two subsequent retrospective applications for listed building consent which have been submitted during the appeal process. I have therefore not been able to reach a conclusion on this matter.
27. Taken together, although I have found some elements of the scheme to be acceptable, other aspects of the works and proposals are considered harmful to the special interest and significance of the listed building insofar as they would harmfully interrupt the plan form of the property and draw attention from remaining architectural features such as fireplaces. This would be contrary to the Act and paragraph 212 of the Framework which advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
28. Applications for listed building consent are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004 and as such are not required to be determined against the development plan. However, I have had regard to policy 39 of the CP which states that development should ensure heritage assets, and their

settings, are conserved and enhanced, in a manner appropriate to their significance. Given my findings with regards to the impact of the proposals on the listed building, the scheme would be contrary to this policy and the development plan as a whole.

Heritage Balance

29. I have found harm to the significance of the listed building. I agree that the harm would be less than substantial in the parlance of paragraph 215 of the Framework which advises that this harm should be weighed against the public benefits of the proposal. The harm may well be at the lower end of less than substantial, but this harm is still worthy of great weight and importance which weighs against the scheme considerably. I have had regard to the views of both parties with regards to the public benefits presented to me at the hearing in the appellant's written submissions.
30. The amended layout would create an additional letting room, which would add to the Council's supply of this type of tenure. The Council did not object in principle to the amended layout of the property, notwithstanding impacts upon the special interest and significance of the listed building. There would also be some further benefit from construction of the changes and as such both are worthy of positive weight in favour of the scheme, albeit this would be limited in the context of the size of the project. This would therefore not outweigh the harm.

Other Matters

31. There is clear dispute between the main parties regarding the removal and replacement of ceilings and cornicing which has taken place across the property. The appellant advises that these elements were discovered to be damaged when suspended ceilings, which did not have consent, were removed but do not form part of the appeal for which retrospective listed building consent is sought. I have some information before me regarding the qualifications of the tradesperson who carried out the work and I have no reason to doubt their competency in this trade. There is reference to the ceilings and cornicing on floors plans¹⁰ approved in the 2021 applications with a note stating, 'suspended ceiling removed cornice retained and refurbished'.
32. I note the decision notice for the 2021 listed building consent approves the works with condition 4 adding that agreement must be reached for removal of the suspended ceilings at ground and first floor level to the front and rear and a methodology for the restoration of the same elements. It was evident at the hearing that the removal of the original ceilings and cornicing has been undertaken without said agreement required by the condition. However, the appeals before me are not enforcement related, and if the Council suspects that work has been undertaken without authorisation it should take the appropriate action. In any event, I have insufficient evidence before me to determine whether the works would preserve the special interest and significance of the listed building. As such, I have not considered this matter further.
33. The appeal site is located within the Bayeswater Conservation Area (BCA). I have therefore had regard to the statutory duty laid out in section 72(1) of the Act to pay special attention to the desirability of preserving or enhancing the character or

¹⁰ Including Drawing: 0151.PP! 'Proposed Plans'.

appearance of the conservation area. Given the internal nature of the works, the character or appearance of the BCA would not be harmed, in accordance with the Act.

Conditions

34. While I have dismissed some of the works related to Appeal B, I have allowed other elements. This requires conditions are imposed to clarify these matters. Appeal A is allowed subject to the agreement of additional information between the main parties. The Council included a list of suggested conditions with its appeal statement. The parties have submitted this list with comments in the SoCG and comments were also invited at the hearing. Some of these are still disputed, although there was broad agreement at the hearing that these could be resolved by rewording some of the conditions to reach their intended purposes. I have amended the wording of some of these to ensure they meet the test of the Planning Practice Guidance and Framework with regards to conditions.
35. As many elements of the scheme are retrospective, a time commencement condition is not considered necessary in either appeal. I have specified that the amended floor plan showing the lobbied entrance which is fundamental to the agreement of Appeal A is specified in the new operational management plan. This is to ensure occupiers of the HMO and neighbouring properties are provided with and maintain suitable living conditions.
36. For Appeal A, conditions to specify the working hours for various construction works, to ensure the communal facilities are usable and that cycle storage facilities are in place are necessary to ensure suitable living conditions of occupiers of neighbouring properties and the HMO itself. However, the cycle storage was specified to be provided in two separate conditions and to avoid repetition I have omitted the standalone requirement for this as it is included in the other communal facilities.
37. A further condition to ensure materials and finished appearance match those in the building is suggested to preserve the listed building. However, this is not necessary to attach to Appeal A as it relates to matters best controlled under Appeal B and as such is omitted from the former. While this may be a standard condition, it is unclear as to why the original method of construction must be used and as such, I have omitted this element of the condition.
38. Further conditions to agree to a scheme of landscaping are necessary to maintain the character and appearance of the area, including the BCA, and to agree energy usage reduction means to ensure the development seeks to minimise the effects of climate change in accordance with the CP and overarching aims of the Framework.
39. For Appeal B, alongside the omission of details relating to construction methods relating to materials, a condition to agree details relating to the door at the lobbied entrance is required. Both are necessary to ensure the listed building is preserved.

Conclusion

40. I have found that the amended plans subject to Appeal A would be acceptable in order to ensure the requisite living conditions for occupiers of the property. As such, this appeal is allowed and the conditions amended in the manner outlined in

the decision paragraph and the conditions attached. Appeal A would therefore accord with the development plan and Framework and is acceptable.

41. I have found some existing and proposed elements of the application for listed building consent to be acceptable and preserve the listed building. These matters would accord with the Act, Framework and development plan. However, I have also found harm caused by other elements of the scheme, particularly those to ground and first floor rooms. These works fail to preserve the listed building, in conflict with the requirements of the Act, Framework and the material considerations of the development plan as a whole. The benefits are not sufficient to outweigh that conflict. Accordingly, for the reasons given, a split decision is issued on Appeal B.

C McDonagh

INSPECTOR

Schedule of Conditions – Appeal A

1. Except for piling, excavation and demolition work, building work which can be heard at the boundary of the site should be undertaken only:
 - between 08.00 and 18.00 Monday to Friday.
 - between 08.00 and 13.00 on Saturday; and
 - not at all on Sundays, bank holidays and public holidays.

Piling, excavation and demolition work should only be undertaken:

- between 08.00 and 18.00 Monday to Friday; and
- not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety).

2. Within 3 months of the date of this decision, the communal facilities comprising of the lounge and kitchen/dining/utility room, cycle storage to front basement and communal garden shall be provided, retained, maintained and available and accessible for all occupants of the building at all times.
3. The House of Multiple Occupation (HMO) shall be operated in accordance with the Operational Management Plan approved pursuant to discharge of condition notice 22/07722/ADFULL, including those updated arrangements to the ground floor lobby specified in drawing number 122.300 Revision P2.
4. Within 1 month of the date of this decision the waste storage arrangements agreed under consent 23/05647/ADFULL shall be installed for all HMO units and thereafter maintained.
5. The landscaping details approved under discharge notice 22/07780/ADFULL shall be carried out within the first planting season following this decision.
6. Within 1 month of the date of this decision, evidence shall be submitted and agreed with the local planning authority that the approved energy reduction scheme agreed under discharge notice 23/05643/FULL has been implemented.

Schedule of Conditions – Appeal B

1. All new work and improvement inside and outside the building must match existing original adjacent work in terms of the choice of materials and finished appearance.
2. Prior to any works relating to the door of the new lobbied entrance commence, detailed drawings showing the elevations and horizontal/vertical sections of the new lobby door should be submitted to and agreed in writing with the local planning authority.

End of Schedules