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## Appeal Decision

Site visit made on 17 November 2025

**by Mr C J Tivey BSc (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 28 November 2025**

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**Appeal Ref: APP/A5270/W/25/3371788**

**37- 38 The Mall, Basement Office, Ealing, London, W5 3TJ**

- 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 Adam Bassi of Perpetuity Properties Ltd against the decision of Ealing Council.
  - The application Ref is 250051FUL.
  - The development proposed for the change of use and conversion of the lower ground floor into 4 self-contained residential units; demolition of existing rear extension and construction of a separate three-storey (above lower ground) & mansard building to accommodate a further 3 self-contained residential units.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appellant submitted some revised drawings and documents with their appeal form which comprise a series of minor internal and external changes to the proposed development; also submitted under the Wheatcroft principle are an amended daylight and sunlight report, revised bedroom dimension table for unit 1 and evidence for local housing demand. Bearing in mind that the local planning authority and third parties were given an opportunity to comment upon these as part of the appeal process, I consider that my acceptance of these drawings and documents would not cause unlawful procedural unfairness to anyone involved in the appeal. Furthermore, having regard to the Holborn Studios<sup>1</sup> judgement, the proposed amendments would not involve a substantial difference to the scheme therefore I have taken them on board in coming to my decision.
3. In addition, the appellant made reference to the recent publication of a Written Ministerial Statement (WMS) concerning government measures to increase house building in London, and specifically with regard to the proposal to withdraw some design restrictions, provided that homes have adequate passive ventilation, daylight and privacy, and avoid overheating. These are the subject of public consultation and have not yet come into effect, therefore I consider that I can only give the WMS limited weight in assessing the proposal.
4. It has been found recently by my colleagues in the examination of the Ealing Local Plan 2024-2039 that the Council cannot currently demonstrate a five year supply of housing land. Consequently, having regard to paragraph 11 of the National

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<sup>1</sup> Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Planning Policy Framework (the 'Framework'), the 'tilted-balance' in favour of sustainable development should apply where the policies which are most important for determining the application are out-of-date, planning permission should be granted unless, *inter alia*, the application of policies in the Framework that protect areas or assets of particular importance, such as designated heritage assets, provide a strong reason for refusing the development proposed.

5. I have determined the appeal on this basis.

### **Main Issues**

The main issues are:

- i. Whether the proposal would preserve or enhance the character or appearance of the Ealing Common Conservation Area, and the effects of it upon the setting of the Ealing Town Centre Conservation Area and locally listed buildings, 32-39 The Mall;
- ii. The effect of the appeal proposal upon the living conditions of the occupants of 37-38 The Mall, having specific regard to outlook; and
- iii. The effect of the appeal proposal upon the living conditions of future occupants of the proposed development, specifically those of units 1- 4 with regard to outlook and external amenity space provision.

### **Reasons**

#### *Heritage, Character & Appearance*

6. The appeal site falls within the Ealing Common Conservation Area the immediate boundary for which runs along the southwestern boundary of the appeal site abutting the eastern flank elevation of 1 Florence Road, which is presently being renovated. This conservation area boundary is contiguous with that of the Ealing Town Centre Conservation Area which together form a part of the former historic county of Middlesex and are specifically of a mainly Victorian and Edwardian character, with construction of some of the buildings going back to a time when Ealing started to expand and flourish as one of London's more desirable suburbs.
7. The appeal site comprises a vacant educational facility on the lower ground floor of a generally well conserved four and a half storey double fronted building which originally comprised of 2no dwellings that have since been converted to a number of flats from ground floor level upwards. The Ealing Common Character Appraisal cites nos 32-39 as being locally listed buildings due to their façade/group value; and I've been given no substantive reason to come to a different conclusion on this, therefore I consider the host building and the terrace of which it forms part to comprise non-designated heritage assets.
8. Overall, the character of the conservation areas comprises fine examples of vernacular architecture including the aforementioned Florence Road from which the rear of the appeal site is clearly visible from a point between the built form of 39 The Mall and no1.
9. Some modern development is also apparent within the locality and includes contemporary rear extensions to not only no 39, but also at 40 The Mall on the opposite side of the junction of Florence Road with The Mall. In addition, a

substantial mixed-use development has been constructed in recent years to the rear of 45 The Mall and whilst I've had regard to this and the examples of other developments cited by the appellant, ultimately each case must be assessed on its own merits.

10. The proposal would demolish the existing single storey flat roof block to the rear of the appeal site which is of relatively modern construction and is of no architectural merit in itself. The existing partitions within the lower ground floor of the main range would largely be removed and reconfigured to create 2no 1-bedroom flats with a modest gap created to provide some external amenity space for both of those units, as well as units 3 & 4 beyond (to the rear). All in all, I consider that these elements in themselves would be fairly innocuous in terms of their visual impacts, and I note that the Council has no objection to the principle of the development per se.
11. However, the scheme also proposes the erection of a narrow mini tower block with bin and cycle storage, access/circulation space leading to a stairwell with 3no flats located on each of the 4no floors above, with unit no 7 being a duplex unit providing 2no bedrooms. Whilst I note that the principal public views into the rear of the site from Florence Road generally comprise a small parking court and the rear elevations of all the properties within the terrace, and those buildings fronting The Common, that does not automatically render it as a visual gap that must be filled.
12. Indeed, the narrowness of the block combined with its overall height, along with a cantilevered ground floor would render it as out of proportion with its built context and incongruous in its appearance, with it being only being 2.85m from the flank elevation of no1 and set back from the public highway by some distance it would conflict with the prevailing pattern of development within the locality. This is notwithstanding that the materials proposed to be employed seek to match those used on the buildings to either side.
13. I consider that the block of flats would not read as a 3-storey town house or as a robust 'bookend' to the larger converted townhouse at no1 as it would be a standalone feature that would ultimately be higher than the aforementioned neighbour whilst being uncharacteristically narrow. In addition, the massing of the block fails to complement the rear extension at no39, and overall, it would fail to create a coherent streetscape to Florence Road by virtue of its recessed nature and scale.
14. Therefore, respectfully, I consider that the scheme would comprise poor design and would fail to create a high quality, beautiful building as required by the Framework in paragraph 131. I say this notwithstanding that the scheme would make effective use of land, but on this point the Framework in paragraph 129 clearly requires the efficient use of land to take into account the desirability of maintaining an area's prevailing character and setting, as well as the importance of securing well-designed, attractive places, which would not be achieved by the proposal.
15. Consequently, I consider that the proposal would fail to preserve the character and appearance of the Ealing Common Conservation Area and therefore I find that the proposal would lead to less than substantial harm to the significance of the designated heritage asset, pursuant to paragraph 215 of the Framework. I deal with the public benefits of the proposal at the end of this decision letter, however Framework paragraph 212 stipulates 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. In addition, I find that the proposal would give rise to harm to the setting of the Ealing Town Centre Conservation Area and of the locally listed buildings/non-designated heritage assets.

16. The proposal would be contrary to policies D3, D4 and HC1 of the London Plan and policies 7.4, 7B and 7C of the Ealing Development Management DPD (2013) which together stipulate that development proposals should advance local context by delivering buildings and spaces that positively respond to local distinctiveness through good design and respecting heritage assets and their settings.

#### *Living Conditions - Existing Residents*

17. From ground level and above, 37-38 The Mall has been converted into flats; it is agreed between the parties that the distance between their rear elevations and the proposed 3 storey building would be 11m. I acknowledge that this distance may be greater than with some other developments that have been approved by the local planning authority, but with respect 'two wrongs don't make a right'.
18. Whilst I have not been made aware of a specific design standard relating to the distance between habitable room windows and new buildings, I consider that 11m is an inappropriate distance, and the proposed building would significantly curtail the outlook from the existing flats, particularly those on the lower floors.
19. Consequently, I find that the scheme conflicts with policy 7B of the DPD in that the proposal would fail to achieve a high level of amenities for the occupants of neighbouring properties; and conflicts with paragraph 135.f) of the Framework which requires developments to promote a high standard of amenities for existing and future users.

#### *Living Conditions - Future Occupants*

20. The revised proposed lower ground floor layout shown on drawing 2353 PL003 B identifies that both unit nos 1 and 2 would have living space looking towards The Mall with their respective bedrooms looking out onto a shallow courtyard area. Whilst the area of proposed amenity space to serve unit no 1 would be slightly below the minimum 5m<sup>2</sup>, on balance, I consider that the outlook thereto and its overall usability would be reasonable having regard to the standards set out within DPD policy 7D and London Plan Policy D6.
21. I question the quality of such spaces, and one would feel rather hemmed in when utilising them, having said that they would be better than no provision at all, although that's hardly a glowing endorsement. However, the proposed amenity space to serve unit nos 3 and 4 would be significantly under the minimum amenity space standard. A degree of defensible space would be provided to the inward facing habitable windows of these units, although it's not clear whether these would be screened off to prevent mutual overlooking, and if they were that would provide a greater sense of enclosure to future occupants.
22. Overall, I consider that the layout of the flats, particularly due to the overall scale of unit nos 3 and 4, that the internal site layout would appear cramped and contrived and again would fail to give rise to the high quality living conditions that the

Framework and development plan require. I acknowledge that units nos 3 and 4 would essentially be dual aspect, although in reality the outlook from any habitable room windows and doors would be extremely limited and I find the proposal in conflict with London Plan policy D6 and DPD policies 3.5 and 7B which again require new developments to achieve a high standard of amenity for users and if there are extensions to existing development they should ensure that the resulting development as a whole meets design standards.

### *Heritage & Planning Balances*

23. I have found that harm would be caused by the proposal in respect of designated and non-designated assets and consequently I consider that the application of the historic environment policies within the Framework provide a strong reason for refusing the development proposed, consequently the tilted balance in favour of sustainable development is not engaged.
24. There would be benefits flowing from the scheme, such as making more efficient use of urban land and it would provide much needed small units of residential accommodation within a highly accessible location which cumulatively I give significant weight to. The new units would be energy efficient and sustainable with some very modest biodiversity net gain (which is not mandatory in this case), however collectively I give these elements moderate weight.
25. As highlighted above, the Framework stipulates 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, irrespective of the level of harm. I consider that the public benefits of the proposal do not outweigh the less than substantial harm to the Ealing Common Conservation Area.
26. Combined with the harm that would be caused to the setting of a further designated heritage asset (Ealing Town Centre Conservation Area) and the non-designated heritage assets (nos 32-39 The Mall) I consider that substantial weight should be given to the heritage harms that would be caused by the scheme.
27. In addition, the living conditions of existing and future residents would also be demonstrably harmed by the proposed design and layout, and I consider these harms to be significant which when combined with the aforementioned heritage harms outweigh the benefits of the proposed development.

### **Conclusion**

28. Therefore, having regard to the above and all other matters raised by the appellant, I conclude that the appeal be dismissed.

*C J Tivey*

INSPECTOR