



Appeal Decisions

Site visit made on 10 November 2025

by Ann Veevers BA(Hons) Dip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2025

Appeal A Ref: APP/X5990/W/25/3371070

6 Upper Wimpole Street (also includes 6 Devonshire Mews South), London W1G 6LG

- 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 Ms Lucie Ware against the decision of City of Westminster Council.
 - The application Ref is 24/06468/FULL.
 - The development proposed is extensions and internal and external alterations to the existing property to facilitate the use as a single family dwelling, including demolition and rebuilding of the existing rear infill extension and mews house behind a retained facade, and the erection of a mansard roof extension at 6 Upper Wimpole Street and extension of the basement.
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Appeal B Ref: APP/X5990/Y/25/3371071

6 Upper Wimpole Street (also includes 6 Devonshire Mews South), London W1G 6LG

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Ms Lucie Ware against the decision of City of Westminster Council.
 - The application Ref is 24/06469/LBC.
 - The works proposed are extensions and internal and external alterations to the existing property to facilitate the use as a single family dwelling, including demolition and rebuilding of the existing rear infill extension and mews house behind a retained facade, and the erection of a mansard roof extension at 6 Upper Wimpole Street and extension of the basement.
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Decisions

1. **Appeal A Ref: APP/X5990/W/25/3371070:** The appeal is allowed and planning permission is granted for extensions and internal and external alterations to the existing property to facilitate the use as a single family dwelling, including demolition and rebuilding of the existing rear infill extension and mews house behind a retained facade, and the erection of a mansard roof extension at 6 Upper Wimpole Street and extension of the basement at 6 Upper Wimpole Street (also includes 6 Devonshire Mews South), London W1G 6LG, in accordance with the terms of the application, Ref: 24/06468/FULL, and subject to the conditions in Schedule 1 attached.
2. **Appeal B Ref: APP/X5990/Y/25/3371071:** The appeal is allowed and listed building consent is granted for extensions and internal and external alterations to the existing property to facilitate the use as a single family dwelling, including demolition and rebuilding of the existing rear infill extension and mews house behind a retained facade, and the erection of a mansard roof extension at 6 Upper Wimpole Street and extension of the basement at 6 Upper Wimpole Street (also includes 6 Devonshire Mews South), London W1G 6LG, in accordance with the terms of the application, Ref: 24/06469/LBC, and the plans submitted with it

(Drawing Nos. TQRQM23088182917738; 2207/RP2/01 B; 2207/RP2/02 B); 2207/RP2/03 B; 2207/RP2/04 A; 2207/RP2/05; 2207/RP2/06 A; 2207/RP2/07 A; 2207/RP2/08 A; 2207/RP2/09 B; 2207/RP2/11 A; 2207/RP2/13 B; 2207/RP2/14 B; 2207/RP2/15); and subject to the conditions in Schedule 2 attached.

Preliminary Matters

3. The appeals concern the same site and the same scheme. Although the remit of planning permission (Appeal A) and listed building consent (Appeal B) regimes are different, to reduce repetition, I have dealt with both appeals together in a single decision letter.
4. The address on the appeal forms, which is also included in the Council's description of development and works on the decision notices, more accurately reflects the location of the appeal site than that on the application forms. I have therefore used it in the banner heading above. I have also taken the descriptions from the Council's decision notices as this more accurately describes the development and works and I note the appellant has no objection to this change.
5. I have been provided with the examining Inspector's report regarding the Westminster City Plan 2019-2040 Partial Review (CPPR), which concludes that the plan is sound, subject to modifications¹. The Council is scheduled to adopt the CPPR on 21 January 2026. The parties were invited to comment on the relevance of the CPPR and its status to the appeals. The parties largely agreed that the CPPR is capable of attracting considerable weight at this stage. Given its advanced progress towards becoming part of the development plan for the area, I agree that the CPPR, modified as recommended, should be afforded considerable weight.
6. As the appeal site is in a conservation area and relates to a listed building, I have had regard to the statutory duties under sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act).
7. The Council's reason for refusal cited in both decision notices focuses on the perceived harmful effects of the 'loss of historic roof form' and the 'proposed roof extension'. With the exception of the mansard roof extension, the Council's officer reports and Statement of Case confirm that other elements of the proposed development and works set out in the descriptions of development and shown on the submitted plans are acceptable, subject to the submission of further details by condition. Indeed, it is notable that parallel applications for planning permission and listed building consent for much of these developments and works, omitting the mansard roof extension and the replacement third floor windows in 6 Upper Wimpole Street, were granted permission and consent by the Council in May 2025² (the 2025 Permissions).
8. From the evidence before me, I have no reason to take a different view in relation to these other elements of the appeal schemes, and I find that the 'proposed extensions and internal and external alterations to the existing property to facilitate the use as a single family dwelling, including demolition and rebuilding of the existing rear infill extension and mews house behind a retained facade at 6 Upper Wimpole Street and extension of the basement' would preserve the special

¹ Report on the Examination of the Westminster City Plan 2019-2040 Partial Review, dated 13 November 2025

² LPA Refs: 24/06677/FULL and 24/06678/LBC

interest of the listed building and would not harm its significance or the character and appearance of the conservation area. Therefore, my considerations below are focused on the development and works relating to the mansard roof extension.

9. Also within evidence submitted by both parties is reference to a previous planning permission and listed building consent issued by the Council in 1990, subject to conditions, for the 'erection of mansard storey and rear lift extension at basement to second floor mezzanine level; partial demolition and rebuilding of rear wing; conversion and use of premises as single family dwelling house; associated alterations including replacement of 2 basement windows to rear elevation with doors' at the appeal site³ (the 1990 Permissions). Both parties agree that some of these approved development and works have subsequently been implemented, although the lawfulness of the listed building consent is a matter of dispute between the parties. Nevertheless, the appellant submits that these permissions represent a 'fallback position' and I have considered this factor later in my decision.

Main Issues

10. Mindful of the above, and the reason for refusal cited in the Council's decision notices, I have identified the main issues as follows:
- whether the 'proposed roof extension at 6 Upper Wimpole Street' would preserve the Grade II listed building, 1-6 Upper Wimpole Street W1⁴, or any features of special architectural or historic interest that it possesses; and,
 - whether the proposed roof extension would preserve or enhance the character or appearance of the Harley Street Conservation Area.

Reasons

Special interest and significance

Listed building

11. The appeal site comprises of a four storey residential building with a basement fronting Upper Wimpole Street (No 6) and an associated two storey mews building fronting Devonshire Mews South. Together, they form a single dwelling. No 6 forms part of the Grade II listed building, 1-6 Upper Wimpole Street W1 (the listed building) which dates from the late 18th century.
12. Each of the properties within the listed building are broadly similar in appearance, constructed from yellow stock brick with stucco to the ground floor front elevation, arched front doorways and front lightwell to the basements enclosed by iron railings at street level. Evidence indicates that the adjoining property at 7 Upper Wimpole Street (No 7) is also Grade II listed, as is 8-13 (consecutive) Upper Wimpole Street (Nos 8-13). Together with the listed building, they form a continuous row on the east side of Upper Wimpole Street and make an important contribution to the setting of the listed building. Despite certain alterations to the facades, fenestration and roofs of individual properties in the row, similarities in their age, overall height and form creates an architectural and aesthetic connection between them as one uninterrupted terrace.

³ LPA Ref: 90/01516/FULL and 90/01517/LBC

⁴ National Heritage List for England, List Entry Number: 1274702

13. At the rear, the listed building has a more modest elevation, with each individual property within it incorporating less architectural detailing than their front facades and incremental alterations and additions of varying designs and sizes. Nevertheless, the rear elevation still retains a consistent form and the historic bowed rear facade at No 6 remains intact. The row of mews buildings at the rear of the listed building fronting Devonshire Mews South are a feature commonly found with Georgian terraces. While many of the individual mews buildings within the row have been significantly altered and extended, as a result of their physical and historical associations with the listed building to which they were once linked, they assist in reinforcing the original importance of the principal building and contribute positively to its significance.
14. From the information before me and my own observations, I find the special interest and significance of the listed building, insofar as it relates to these appeals, to be largely derived from its architectural and historic interest in illustrating the formally laid-out housing in this part of London, reflecting as it does its planned growth in the 18th century. Other important contributors which are pertinent to the appeals are the use of traditional methods of construction and materials; surviving historic fabric and features; pleasing architectural form; and the building's group value with adjacent buildings, which contribute to the formal composition of the historic cityscape.
15. An important architectural feature of Georgian terraced houses in London are their roofscape, in particular, the 'M' shape roof. Information before me suggests this formed part of the historic fabric of each of the properties within the listed building. The 'M' shape roof is a subservient roof form which allows the front elevation and parapet detail of the building to take prominence. However, from the evidence and what I saw at my site visit, four of the individual properties within the listed building have mansard roofs of various forms, with only No 6 and No 1 retaining a low-profile roof hidden behind a parapet wall on the front elevation. These existing mansard roofs are clearly visible from street level behind a parapet and have harmed the historic architectural proportions of the listed building and in so doing, have diminished its special interest.
16. Furthermore, whilst I have no information about the internal roof structure within the whole of the listed building, I saw that part belonging to No 6 is 'M' shaped. However, as a result of previous works to the roof, it is partially concealed, internally, by modern steel and timber posts; and externally, by a lead sheet covering. This has also undermined an important feature of the building's special interest and significance and the ability to appreciate that significance.

Conservation Area

17. The Harley Street Conservation Area (CA) encompasses residential and commercial properties predominantly based on a historically designed street layout. Not all properties on each street include the same detailing. However, the age, height and proximity to the street of buildings in the area provide, insofar as it relates to this scheme, a recognisable consistency and aesthetic value to the area's character and appearance. As such, I find the special interest and significance of the CA is derived, in part, from the historically planned and architecturally detailed terraces of period buildings.

18. Properties along Upper Wimpole Street are located within one of three character areas defined in the Council's Harley Street Conservation Area Audit as some of the most complete examples of Georgian terraces⁵. Whilst the historic gardens to the rear of the buildings along the street have largely been lost, I consider the appeal property presents a well-preserved and strong uniform character which adds to the visual quality of the area. This positively contributes to the character and appearance of the CA as a whole and thereby to its significance as a designated heritage asset.

Proposals and effects on significance

Listed Building

19. Paragraph 212 of the National Planning Policy Framework (the Framework) sets out, 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. Paragraph 213 goes on to state that, significance can be harmed or lost through the asset's alteration or destruction or from development within its setting, and that this should have clear and convincing justification.
20. It is proposed to dismantle the existing historic 'M' shape timber roof structure and re-build it within a mansard roof above a new fourth floor. Internally, the roof is accessed via a timber attic stair which, as well as the external layered lead sheet covering, the appellant suggests are likely to date from the early 20th century. I consider these are of some historic value as an indication of the evolution of the building. Although some of the internal timbers and sarking forming the internal 'M' shape roof structure may have been repaired or replaced, its authentic design and any remaining historic fabric contribute to the architectural composition of the building as an important feature.
21. The Council's Supplementary Planning Guidance 'Repairs and Alterations to Listed Buildings', dated 1995 clearly sets out a presumption in favour of the retention of historic roofs because their form, structure and materials are almost always of interest. It also advises that the concealed roof of a traditional terraced house can be just as significant as a steeply pitched roof which is visible from the street and that while many original roofs on terraced houses in Westminster have been replaced by later mansard roofs, where original roofs survive, including the 'm'-shaped or double pitched roof, these should normally be preserved.
22. However, although the internal timber 'M' shape roof at No 6 still expresses evidential value, and thus significance, its degree of special architectural interest has been significantly diminished through later intervention. Notably through the insertion of substantial steel beams within the roof space, parts of the lead-clad roof being supported directly off the ridges of the historic roof, and the complete covering of the structure such that its 'M' shape is not externally visible, albeit a lack of visibility does not necessarily equate to a lack of harm.
23. Structural information submitted by the appellant⁶ (MBOK), indicates that even if the existing roof form were to be retained, it would require significant structural interventions in order to make it safe. This would be likely to include the replacement/splicing of rotten timber, installation of a new strengthened beam,

⁵ Section 2 of appellant's Heritage Appeal Statement of Stephen Handforth.

⁶ MBOK consulting structural engineers 'Comment on structural condition at 6 Upper Wimpole Street', project no 23008, August 2025, Revision 2

replacement of the existing ridge timbers with a structural element capable of spanning side to side, and additional rafters/ties. This has not been disputed by the Council.

24. Furthermore, it is the intention of the appellant to retain as many existing roof timbers as possible to use within the proposed mansard roof and to replicate the 'M' shape within it, making the works reversible as far as those timbers that are in good condition are concerned. Nonetheless, the historic 'M' shape roof would not remain in situ. Its relocation would represent a further intervention into an already significantly altered element of the building's historic fabric which would diminish an understanding of the building's historic form and thus, as a matter of fact and albeit in a small way, weaken the sum of special architectural interest the building possesses. I note the appellant accepts the loss of the historic roof structure would result in a degree of harm.
25. In terms of the proposed mansard roof, this would be constructed using the existing 'M' shape roof structure, covered externally by natural slate and lead. It would be stepped in from the front and rear parapet and include roof lights within the central valley.
26. The historic low roof profile of No 6 would be lost to a sizeable addition that, in rising above the front facade, would not reflect the historic Georgian form of the building. That said, almost all the other individual properties within the listed building have a mansard roof. It is therefore not an unusual element of the listed building as a whole.
27. Even allowing for the fact that the proposed mansard would span the width of No 6, it would not become a visually dominant element of the listed building as a whole. This is because it would be stepped back from the front and rear parapets and sit between tall chimney stack walls. Windows to the front and rear of the mansard roof would align with all windows below and would be timber sash. The proposed openings would ensure that the general proportions of fenestration distinctive in these period properties would be respected in so much as the openings would be larger at the lower floor, with diminishing size of windows at the upper floor levels. I consider that these factors in combination would provide sufficient distinction to respect the hierarchy of fenestration to the front of the listed building.
28. I also note the existing roof structure of No 6 has a form that obscures the building's historic 'M' shape. The proposed retention and reuse of existing historic materials within the proposed mansard roof would allow its 'M' shape form to be more apparent, although not in public views. In any event, listed buildings are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views of the building can be gained.
29. Having regard to the evidence before me, I consider that the proposed mansard roof extension in itself would have a neutral effect on the special interest and significance of the building. However, the removal of historic roof fabric, even if replaced elsewhere in the building, would harmfully erode the authenticity of the listed building's roof form and in so doing, the ability to understand and appreciate its significance would be diminished. Consequently, this element of the proposals would fail to preserve the Grade II listed building.

Conservation Area

30. The proposed mansard roof extension would alter the roofline of the listed building by introducing an additional bulky feature at high level. The front of the building and terraced row is prominently located and widely visible. The rear is less visible from the public domain due to the intervening mews buildings along Devonshire Mews South and the narrow intimate nature of this street. Nonetheless, it was evident to me during my visit that there are already a considerable number of mansard roof extensions on the listed building and other buildings in the row. Thus, the symmetry of roofscape which may have historically existed on the listed building and other buildings in the row is considerably diminished by these changes.
31. I acknowledge that roof additions can be harmful to a historic streetscape. However, in this case, the size, form and design of the proposed mansard roof extension would be comparable to others on the listed building, as well as those I saw at No 7, Nos 8-13 and on the other side of the street and which now form part of the character and appearance of the area.
32. In this context, I am satisfied that the relationship of the mansard roof and dormers with neighbouring buildings would not appear unacceptably awkward or discordant. It would not adversely disrupt any distinctive architectural uniformity or interest that contributes to the significance of this part of the CA. As a consequence, the proposed roof extension would preserve the character and appearance of the CA as a whole.

Conclusion on effects

33. For the reasons outlined above, whilst I find that the proposed roof extension would preserve the character and appearance of the CA, as a result of the loss of historic roof fabric in situ, it would fail to preserve the Grade II listed building, 1-6 Upper Wimpole Street W1, or any features of special architectural or historic interest which it possesses. This would be contrary to the requirements of sections 16(2) and 66(1) of the LBCA Act. As a result, the proposed roof extension would harm the significance of this designated heritage asset.
34. In finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Planning Practice Guidance (PPG) requires the category of harm to be 'explicitly identified', and the extent of harm within that category to be 'clearly articulated'⁷. In this case, given that the loss of fabric would be limited to a small element of one of the properties within the overall listed building which would, in any event, be retained and re-used within the proposed mansard roof, I consider it to be at the low end of less than substantial harm. Nevertheless, this carries considerable importance and weight. Paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposals, which includes securing the optimum viable use of the building.

Heritage Balance

35. The Council does not dispute that the scheme approved under the 2025 Permissions would offer heritage benefits in relation to the listed building and the

⁷ Paragraph: 018 Reference ID: 18a-018-20190723

CA. However, it argues that these benefits have already been secured and that the other benefits the appellant has identified in relation to the appeal proposals would not outweigh the harm caused by the addition of the mansard roof to the significance of the designated assets.

36. The additional heritage benefits proffered by the appellant in relation to the appeal proposals over and above those already taken into account in relation to the 2025 Permissions would include the alteration of the glazing pattern of three third floor sliding sash windows on the front elevation, revealing the 'M' shape roof and delivery of a unified roofscape. In my view, the existing glazing pattern of the front third floor windows aligns well with other windows on the front elevation and is not harmful to the appearance of the building or the CA. Their replacement with 3 over 6 panes would have a neutral effect on the significance of the listed building and the CA as a whole.
37. Given my findings above, while the reveal of an 'M' shaped roof would allow a visible understanding of the building's historic roof form, it would be in a new location and would remain obscured within the proposed mansard structure. I therefore find it to be a neutral consideration in the heritage balance. Although the mansard roof would not appear unacceptably awkward or discordant in the context of the overall listed building, this does not mean it would be a benefit of the scheme. As I have set out above, it would have a neutral effect on the significance of the listed building and the CA as a whole.
38. The improvements in energy efficiency and biodiversity and other heritage benefits put forward could also be achieved independently of this scheme since they would be delivered either fully or in large part by the 2025 Permissions. Therefore they would not be additional benefits.
39. There would be some economic benefits associated with construction and occupation of the mansard roof but given the scale of this element of the overall proposals, these would be very limited.
40. I appreciate the appellants' desire for increased living space, for it to be flexible and adaptable, and to cater for their needs as well as to allow future generations to live comfortably. I acknowledge that since purchasing the property they have worked hard to restore it. However, the proposed mansard roof extension is essentially for the private benefit of the appellant rather than for the benefit of the public at large.
41. Whilst I note there would be an improvement to the housing stock, I am not convinced the proposals would be the minimum necessary to ensure the property can remain in residential use consistent with the building's conservation. I have seen nothing to demonstrate that the continued viable use of the appeal property as a residential dwelling is dependent on the appeal proposals. The building has an ongoing residential use that would be unlikely to cease in the absence of the proposed mansard roof extension.
42. Together, the public benefits are very limited and must be weighed against the statutory presumption against harm to designated heritage assets. Whilst I have found that the harm caused in this case would be at the low end of less than substantial, this attracts considerable importance and weight. Therefore, the limited public benefits, including those heritage benefits put forward by the

appellant, would be insufficient to outweigh the harm to the designated heritage asset that I have identified.

43. Accordingly, the proposed roof extension would fail to satisfy the requirements of the LBCA Act. It would conflict with policies 38, 39 and 40 of the City of Westminster City Plan 2019 – 2040 (CP). These policies collectively require, amongst other things, that all development will positively contribute to Westminster's townscape and streetscape; that heritage assets and their settings are conserved; that alterations and extensions respect the character of the existing and adjoining buildings and will not obscure important architectural features or disrupt any uniformity, patterns, rhythms or groupings of buildings. There would also be conflict with CPPR policies 42, 44 and 45, which seek the same aims as the policies above and to which I give considerable weight. From the submitted information, I agree with both parties that, whilst relevant to the appeals, there would be no conflict with policy 43 of the CPPR, as recommended for modification by the examining Inspector, and insofar as it seeks the re-use of buildings rather than their demolition.

Fallback

44. Highly pertinent to the appeals are the 1990 permissions. The appellant contends that, along with other extensions and alterations, a 'mansard storey' and was approved to No 6 as part of these permissions and that this constitutes a relevant fallback position. I have been provided with some details of these permissions.
45. There is no dispute between the parties that the 1990 planning permission has been lawfully implemented by some of the works being carried out within the statutory time period. However, the Council argue that, although some of the works subject of the 1990 listed building consent have been implemented, they are unlawful given that details required by pre-commencement conditions (6 and 7) imposed on the consent have not been submitted to and approved by the Council. It is also argued by the Council that the appellant has not sought a certificate of lawfulness for the works already carried out at the property to demonstrate that the works subject of the 1990 listed building consent have been implemented.
46. I note a Certificate of Lawfulness of Existing Use under s191 of the Town and Country Planning Act 1990 (as amended) was granted by the Council in September 2023 confirming the use of 6 Wimpole Street and 6 Devonshire Mews South as a single dwelling⁸. However, there is no similar certification under the LBCA Act. While the Enterprise and Regulatory Reform Act 2013 introduced s.26 to the LBCA Act which includes, at s.26H, the provision for making an application for a certificate of lawfulness of proposed works for the alteration or extension of a listed building, there is no such certification route for existing works (my emphasis). As such, the appellant could not have submitted a certificate of lawfulness in relation any listed building consent.
47. Nevertheless, I find the evidence submitted by the appellant in relation to the development and works carried out at No 6 pursuant to the 1990 permissions compelling. It is clear to me that works were at an advance stage in 1994. Moreover, a representative of the Council, in 1996, confirmed the planning permission had been implemented and that the property was in use as a single dwelling. While it is not for me, under a s20 appeal, to determine whether or not

⁸ LPA Ref: 23/05034/CLEUD

existing works are lawful, I am not aware that at any point since that time, the Council has addressed any potential unauthorised works through enforcement proceedings, although this option remains open in relation to the 1990 listed building consent.

48. With regards to the two pre-commencement conditions on the 1990 listed building consent, simply because the Council have no record of the approval of details relating to these conditions does not mean that the consent has not been lawfully implemented. Indeed, even acknowledging the wording of conditions differ, it seems perverse to me that, having agreed the 1990 planning permission has been implemented, even though there is no evidence that the pre-commencement conditions on the planning permission were submitted to and approved by the Council, the same would not apply to the accompanying 1990 listed building consent.
49. I am directed by the appellant to the principles established by several judgements in relation to conditions⁹. Condition 7 imposed on the 1990 listed building consent requires specific details for part of the overall works to be submitted and approved. However, it would not be essential for these details to be agreed before any of the proposed works could progress. It is also apparent from the evidence in the case of structural information, that this was available sometime between 1990 and 1994. Condition 8 requires no works to start on site without prior written notification of that start to the London Division of the Historic and Monuments Commission (now Historic England). I do not regard an early pre-commencement need to notify Historic England as in any way fundamental or pre-requisite to implementation. On this basis, even if these pre-commencement conditions have not been 'discharged', I am satisfied, based on the evidence before me, that they do not go to the heart of the permission.
50. Taking all of the above into account, the evidence before me indicates that there is a fallback position in this case where the mansard roof could be built in accordance with the 1990 permissions. I have considered how likely it is that the appellant would carry out the fallback position if this appeal is dismissed. While some of the development and works approved under the 1990 permissions have been carried out, it is unclear from the information provided and from observations at my site visit, exactly how much. It seems that the 1990 permissions are not what the appellant wish to fully implement. However, a combination of the 2025 permission and the mansard roof element of the 1990 permission could reasonably be feasible given the approved layouts and I have no reason to believe that the appellant would not carry out such a scenario.
51. Consequently, I consider there is a real prospect that the mansard roof element of the fallback position plus the 2025 permission would be likely to be built by the appellant.
52. Nonetheless, for significant weight to be afforded to a fallback position, there needs to be not only a greater than theoretical possibility of it taking place, but also it would need to be equally or more harmful than the appeal schemes. The fallback would cumulatively provide a comparable sized roof addition to the

⁹ *FG Whitley & Sons v Secretary of State for Wales* (1992) 64 P&CR 296; *R(France) v Kensington and Chelsea RLBC* [2017] EWCA Civ 429; *R(Hammerton) v London Underground Ltd* [2002] EWHC 2307 (Admin), [2003] JPL 984 at para 127; *R (Prokopp) v London Underground Ltd* [2003] EWCA Civ 961; *Norris v First Secretary of State* [2006] EWCA Civ 12; *R (Hart Aggregates) v Hartlepool Borough Council* [2005] EWHC 840 (Admin); *Greyfort Properties Ltd v Secretary of State for Communities and Local Government* [2011] EWCA Civ 908; *R(Howell) v Waveney District Council* [2018] EWHC 3388 (Admin).

building, albeit with a marginally different configuration to that proposed. However, it would be slightly taller and have an awkward visual relationship with the rest of the front elevation due to its mis-aligned fenestration arrangement. It would also not include the retention and re-use of existing timbers to form and replicate an 'M' shape roof feature. As such, insofar as the roof element of the fallback position is concerned, it would result in a greater degree of harm to the significance of the listed building and the CA than the proposals before me. This is a material consideration, and I ascribe to it substantial weight.

Other Matters

53. Information submitted with the appeals suggests there are other listed buildings near to the appeal site and I note the group value of No 6. Apart from their locations, no information has been provided in relation to the adjacent listed buildings, but mindful of the statutory duty set out in section 66(1) of the Act, I have had special regard to the desirability of preserving their settings. The special interest and significance of these assets largely stem from their historic and architectural interests, but is also derived, in part, from their cityscape settings as part of a planned street layout. Given the extent of the proposals, I find that the settings of these designated heritage assets would be preserved and the contribution they make to the assets' significance would not be harmed. I note the Council raised no concerns in this regard either.
54. As set out above, from the evidence before me, I find the other elements of the proposals, aside from the roof extension, would preserve the special interest of the listed building and would not harm its significance or the character and appearance of the CA.
55. In addition to the issues addressed above, I have had regard to other matters raised by interested parties. However, there are no convincing reasons to disagree with the Council's conclusions that the design of the proposed development would be energy efficient and there would be no effect on the living conditions of neighbouring residents with particular regard to light.

Overall Planning Balance

56. I have found that the proposed roof extension at 6 Upper Wimpole Street would preserve the character and appearance of the CA. However, due to the loss of historic roof fabric in situ, it would result in harm to the significance of the Grade II listed building. This would conflict with the development plan.
57. In my judgement, the level of harm to the listed building would be at the low end of less than substantial and whilst this is of considerable importance and weight, the fallback position would have a more harmful visual impact and result in the loss of more historic fabric than the appeal proposals. This represents a material consideration of significant weight sufficient to justify the permitting of development and works that fail to accord with the relevant policies of the development plan.

Conditions

58. I have considered the Council's suggested conditions and had regard to the advice set out in both the Framework¹⁰ and the PPG¹¹. I have undertaken some minor

¹⁰ Paragraph 57.

¹¹ Paragraphs: 007 Reference ID: 21a-007-20180615; and 017 Reference ID: 21a-017-20190723.

editing, rationalisation of the conditions proposed by the Council in the interests of precision and clarity. I have also re-ordered the conditions so that those that are pre-commencement are listed first. The appellant has given written agreement to the conditions.

59. I have imposed a standard time limit condition regarding commencement of development and works. In relation to Appeal A, a condition requiring the development to be carried out in accordance with the approved plans is necessary and reasonable to provide certainty. However, the wording suggested by the Council does not provide clarity as to which plans. I have therefore imposed a standard plans condition. In relation to Appeal B, it is not necessary for this to be included as a condition on the listed building consent, as adherence to the plans which accompany the application is part of the formal decision.
60. In relation to Appeal A, a condition restricting building work hours is reasonable and necessary in order to protect the living conditions of nearby occupiers. However, I have re-worded that suggested by the Council as it is imprecise and ambiguous (for example no definition for noisy work is given). Conditions relating to contamination are also necessary to mitigate risks of land contamination and to safeguard the living conditions of neighbouring residents.
61. Conditions are included relating to landscaping, tree protection and biodiversity, in the interests of ground stability, biodiversity, the character and appearance of the CA and for the avoidance of doubt. I have consolidated the Council's suggested conditions 11 and 12 into one condition (now condition 6) and done the same with conditions 13 and 14 (now condition 7).
62. For both appeals, in the interests of the preservation of the listed building and to preserve the character and appearance of the CA conditions are imposed on both consents concerning materials to be used externally and for specific details of doors, windows, roof lanterns/lights and the condensing unit enclosure. I have not imposed the Council's suggested conditions 15 and 18 for the planning permission and condition 2 for listed building consent as not only is the condition is repeated, but it is ambiguous and covered by other conditions relating to external materials.
63. In relation to Appeal B, a condition is required in relation to the provision of a methodology for tanking works to the vaults in the interests of the preservation of the listed building and drainage. So that features of important internal fabric are undisturbed, that the details of any internal doors and architraves proposed to be removed, relocated or altered are provided, and that new rainwater and soil pipes are black metal conditions are necessary in the interests of the preservation of the listed building. I am also satisfied that conditions are necessary in relation to the protection of existing historic floor coverings and timber roof elements for the same reason.
64. In relation to Appeal A, I have made minor adjustments to the wording of the suggested condition regarding waste storage, which is required in order to secure appropriate waste and recycling storage for occupants of the dwelling. A condition requiring specific details relating to the first floor terrace are necessary in order to protect the living conditions of neighbouring residents.
65. Mindful of the use of condensing units and other plant and equipment at the property, conditions relating to noise and vibration are necessary in order to protect the living conditions of neighbouring residents. A condition requiring the

provision of storage for cycles is necessary to ensure alternative modes of travel are available in this highly accessible location.

66. I have not imposed the Council's suggested condition 16 as the property is an existing residential unit and details of the flood risk assessment are included within the list of approved documents at condition 2.

Conclusions

67. **Appeal A:** For the reasons given above, the appeal is allowed.

68. **Appeal B:** For the reasons given above, the appeal is allowed.

Ann Veevers

INSPECTOR

Schedule 1

Conditions for Appeal A Ref: APP/X5990/W/25/3371070

- 1) The development hereby permitted shall begin not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
Site Location Plan TQRQM23088182917738
Drawing No. 2207/RP2/01 B (Basement existing and proposed plans)
Drawing No. 2207/RP2/02 B (Ground floor existing and proposed plans)
Drawing No. 2207/RP2/03 B (First floor existing and proposed plans)
Drawing No. 2207/RP2/04 A (Second floor existing and proposed plans)
Drawing No. 2207/RP2/05 (Third and fourth floors existing and proposed plans)
Drawing No. 2207/RP2/06 A (Main house roof existing and proposed plans)
Drawing No. 2207/RP2/07 A (Existing and proposed front elevation)
Drawing No. 2207/RP2/08 A (Existing and proposed rear elevation)
Drawing No. 2207/RP2/09 B (Mews elevations existing and proposed)
Drawing No. 2207/RP2/11 A (Proposed section A-A)
Drawing No. 2207/RP2/13 B (Proposed section B-B)
Drawing No. 2207/RP2/14 B (Existing and proposed sections D-D,E-E and F-F)
Drawing No. 2207/RP2/15 (Kitchen services information)
Flood Risk Assessment and SUDS Strategy, September 2024; Structural Methodology Statement, July 2024 ; Structural Condition of Garden Infill Buildings at 6 Upper Wimpole Street, March 2025 ; Noise Impact Assessment, ref EEC/EC20744-4, dated 29 August 2024.
- 3)
 - a) Except for piling, excavation and demolition work, building work shall only take place between the following hours:
08.00 and 18.00 Monday to Friday; 08.00 and 13.00 on Saturday; and not at all on Sundays, bank holidays and public holidays.
 - b) Piling, excavation and demolition work shall only take place between the following hours:
08.00 and 18.00 Monday to Friday; and not at all on Saturdays, Sundays, bank holidays and public holidays.

Work shall 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).
- 4) No development shall take place (including demolition and excavation) until a risk assessment to identify the potential risks associated with any contamination has been submitted to and approved in writing by the Local Planning Authority. The risk assessment shall be informed by the water, ecology and general requirements in Westminster City Council's 'Contaminated Land Guidance for Developers submitting planning applications', dated January 2018 and shall comprise:

a) Phase 1: a desktop study (full site history and environmental information from the public records);

b) Phase 2: site investigation (to assess the contamination and the potential effect it could have on human health, pollution and damage to property).

If any contamination is found, no development shall take place until: a) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority; b) the site has been remediated in accordance with the approved measures and timescale; and c) a verification report has been submitted to and approved in writing by the local planning authority which shall provide details of the action taken during the development in order to demonstrate that the works set out in the remediation strategy have been completed and identifying any requirements for longer-term monitoring.

5) No development shall take place (including demolition, earthworks and piling) until a completed Appendix A checklist from the Council's Code of Construction Practice, signed by the applicant and approved by the Council's Environmental Sciences Team, has been submitted to and approved in writing by the Local Planning Authority.

6) No development hereby permitted shall take place (including demolition and excavation) until measures to protect trees on or adjoining the site throughout the course of development have been submitted to and approved in writing by the Local Planning Authority. Such measures shall include details of arboricultural site supervision and record keeping prepared by an arboricultural consultant who is registered with the Arboricultural Association, or who has the level of qualifications and experience needed to be registered and include:

a) identification of individual responsibilities and key personnel;

b) induction and personnel awareness of arboricultural matters;

c) supervision schedule, indicating frequency and methods of site visiting and record keeping which shall include that during demolition, excavation and construction works, written site supervision records shall be submitted to the Local Planning Authority within 5 days of a supervision visit.

d) procedures for dealing with variations and incidents including for direct arboricultural supervision during operations which may result in root loss or damage. In the event that damage to trees or root protection areas or other breaches of tree protection measures occur then details of the incident and any mitigation/amelioration required shall be outlined in the site supervision record.

The development shall thereafter be carried out in accordance with the approved details and site supervision schedule.

Within 28 days of the completion of the development hereby permitted, the complete site supervision records shall be submitted to and approved in writing by the Local Planning Authority.

7) No pruning of any roots with a diameter of 25mm or greater, or structural roots less than 25mm in diameter, shall take place on the site unless and until:

a) the arboricultural consultant required by condition 12 has assessed the impact of pruning the root on the London plane at 5 Upper Wimpole Street, including undertaking any stability testing and remedial works deemed necessary; and, b) details of pruning works have been provided to and agreed in writing by the Local Planning Authority.

Remedial tree/root pruning works shall be carried out in accordance with the approved details.

8) No development above ground level shall take place until details (photographs and/or manufacturers' specifications) of the external facing materials to be used, including elevations and roof plans annotated to show where the materials are to be located, in the construction of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

9) No development above ground level shall take place until detailed drawings (elevations and plans at 1:10 and sections at 1:5), including showing the materials; of the following parts of the development have been submitted to and approved in writing by the Local Planning Authority:

- a) New external doors, including French doors and those into the courtyard;
- b) New roof lanterns and roof lights;
- c) New windows;
- d) Acoustic enclosure and wall lining for the condensing unit.

The development shall be carried out in accordance with the approved details.

10) No development above ground level shall take place until a sample panel of brickwork, built on site, which shows the colour, texture, face bond and pointing has been provided to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

11) The development hereby permitted shall not be occupied until refuse and recyclable materials storage facilities have been installed in accordance with details that have first been submitted to and approved in writing by the local planning authority, and those facilities shall thereafter be retained for the storage of refuse and recyclable materials.

12) No part of the first floor terrace shall be used until detailed drawings have been submitted to and approved in writing by the Local Planning Authority. The drawings shall include the following:

- a) Floor plans to show the first-floor terrace set back further from the boundary shared with 7 Upper Wimpole Street;
- b) Sections to show the height of the floor level of the terrace in comparison to the roof of 7 Upper Wimpole Street; and,
- c) Details of screening measures, including the new parapet and planting, in relation to neighbouring properties.

The development shall be implemented in accordance with the approved details and retained as such thereafter.

13) No part of the first floor terrace shall be used until a biodiversity management plan in relation to the first floor terrace planting has been submitted to and approved in

writing by the Local Planning Authority. The development shall be implemented in accordance with the approved biodiversity management plan thereafter.

- 14) The development hereby permitted shall not be occupied until a planting scheme has been submitted to and approved in writing by the Local Planning Authority. The planting scheme shall include the number, size, species and position of all trees and plants to be planted at the site. The approved planting scheme shall be carried out within one planting season following completion of the development hereby approved; and any trees or plants which within a period of 1 year from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 15) a) Where noise emitted from the proposed plant and machinery shall not contain tones or shall not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the Local Planning Authority pursuant to Part (3) below. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.
- b) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the Local Planning Authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm and shall be representative of the plant operating at its maximum.
- c) Following installation of the plant and equipment, a noise report shall be submitted to and approved in writing by the Local Planning Authority confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level. The noise report shall include:
- (i) A schedule of all plant and equipment that formed part of the approved development;
 - (ii) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
 - (iii) Manufacturer specifications of sound emissions in octave or third octave detail;
 - (iv) The location of most affected noise sensitive receptor location and the most affected window of it;
 - (v) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;

- (vi) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
 - (vii) The lowest existing LA90, 15 mins measurement recorded under (f) above;
 - (viii) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
 - (ix) The proposed maximum noise level to be emitted by the plant and equipment.
- 16) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.2m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 17) The 2 cycle parking spaces shown on the approved drawing no. 2206/RP / 02 A shall be implemented, maintained and kept available for cycle parking as approved thereafter.

End of Conditions: Schedule 1

Schedule 2

Conditions for Appeal B Ref: APP/X5990/Y/25/3371071

- 1) The works authorised by this consent shall begin not later than three years from the date of this permission.
- 2) No works authorised by this consent shall take place (including demolition and excavation) until a methodology for tanking works to the vaults, including a section through vault tanking and location of drains and pumping equipment have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved methodology.
- 3) No development above ground level shall take place until details (photographs and/or manufacturers' specifications) of the external facing materials to be used, including elevations and roof plans annotated to show where the materials are to be located, in the construction of the works hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 4) No works above ground level shall take place until a sample panel of brickwork, built on site, which shows the colour, texture, face bond and pointing has been provided to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 5) No works above ground level shall take place until detailed drawings (elevations and plans at 1:10 and sections at 1:5), including showing the materials; of the following parts of the development have been submitted to and approved in writing by the Local Planning Authority:
 - a) New external doors, including French doors and those into the courtyard;
 - b) New roof lanterns and roof lights;
 - c) New windows;
 - d) Acoustic enclosure and wall lining for the condensing unit.The works shall be carried out in accordance with the approved details.
- 6) No internal works shall take place to remove, relocate or alter any internal door (including its surrounding architrave) until the details have first been submitted to and approved in writing by the Local Planning Authority. Details to be submitted shall include a photograph of each door, description of works to each door, and be cross-referenced to floor plans to show the location of each door. The works shall be carried out in accordance with the approved details.
- 7) No internal works shall take place until a method statement to demonstrate how the historic floor coverings (flagstones, bricks and timber floorboards) are to be retained, protected or repaired has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 8) No internal works shall take place until a method statement to demonstrate how the historic roof structure (trusses, sarking boards and rafters) are to be retained, protected or repaired has been submitted to and approved in writing by the Local

Planning Authority. The works shall be carried out in accordance with the approved details.

- 9) Existing ornamental features including chimney pieces, plasterwork, architraves, panelling, doors and staircase balustrades shall be left undisturbed in their present position and protected during work on site unless changes are shown on the approved drawings or are required by conditions to this permission.
- 10) All new outside rainwater and soil pipes to the principal building shall be metal and painted black.

End of Conditions: Schedule 2