



Appeal Decision

Site visit made on 24 March 2026

by **L Clark BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2026

Appeal Ref: APP/X5990/D/25/3376223

3 Leinster Mews, City of Westminster, London W2 3EY

- 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 Monica Polinelli of Hyde Park Properties 2 Limited against the decision of City of Westminster Council.
 - The application Ref is 25/03965/FULL.
 - The development proposed is replacement of windows and creation of new roof terrace at third floor level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Inspector notes that the Council has recently adopted its partial review of its City Plan. While the Council contend that the most pertinent to this appeal (Policy 7) is unchanged, Policy 38, referred to in its reason for refusal, is now Policy 42. The main parties have had an opportunity to comment and, as such, I have proceeded on the basis of the updated plan, the City Plan 2019–2040, adopted January 2026 (the City Plan).
3. It was apparent during my site visit that some internal works have commenced, namely the removal of internal walls, fixtures and fittings. I cannot, however, be certain whether the window to the rear, which overlooks the rear of Craven Hill Gardens, has been enlarged as shown on plan 0717 (20) 300. I have therefore assessed the proposed development on the basis of the proposed plans before me and my observations on site.
4. The Council in its Questionnaire requested that I view the appeal property (No 3) from 7 and 8 Craven Hill Gardens (Nos 7 and 8). It further suggested that views be taken from the lower ground lightwells and the second and third-floor units. The Council, however failed to sufficiently identify the particular flats within each of these buildings and across each of the floors.
5. The Council also indicated that if access could not be gained to either Nos 7 or 8, then the Inspector could gain access to neighbouring properties on Leinster Mews. However, from my observations, neither of the immediate properties to No 3 has a roof terrace, and the Council again failed to identify a suitable property. Access was therefore only gained to No 3. I was, however, able to see through the clear glazed window on the second floor towards properties in Craven Hill Gardens, and I am satisfied that I saw everything I needed to assess the impact of the development.

6. During the course of the planning application, a number of design options with regard to detailing screening solutions were discussed with and were discounted by the Council¹. These have been submitted alongside the appeal and show that the overall height of the boundary between the roof terrace and the nearest neighbours on Craven Hill Gardens would be increased, some significantly. I have considered the proposed changes, taking into consideration the tests on Holborn Studios Ltd². Given that the overall height to the boundary would be higher than that considered at the application stage, this would lead to the scheme being substantially different to that for which planning permission was sought. I have nothing before me to indicate that the amendments were formally consulted upon and, as such, I consider it would be prejudicial to interested parties if I were to accept them. I have therefore determined the appeal on the basis of the plans listed on the Council's decision notice.
7. The proposal is for the replacement of windows and the creation of a new roof terrace on the third floor. The Council has indicated that it has no objection to the replacement windows and, based on the evidence, I have no reason to take a different view. The Council has also indicated that it has no objection to the creation of the roof terrace with regard to the Bayswater Conservation Area and, based on the evidence, I have no reason to take a different view. The dispute between the parties relates to the use of the proposed roof terrace and its impact upon the living conditions of existing occupiers within Craven Hill Gardens, and this shall be the focus of my assessment.
8. Whilst the decision notice does not specifically set out which occupants of the neighbouring properties the use of the proposed roof terrace would harm, the Council's officer report does specify that it is properties to the rear. The submitted Site Plan identifies properties to the rear as Nos 7 and 8, and this corresponds with the Council's request that I access these properties. These properties shall therefore be the focus of my assessment.

Main Issue

9. The main issue is whether 5-10 Craven Hill Gardens are residential (Nos 5-10) and, if so, whether the living conditions of existing occupiers of Nos 7 and 8 are likely to be affected through the use of the proposed development, with particular regard to privacy.

Reasons

Whether residential

10. The appellant contends that Nos 5-10 currently operate as student accommodation and holiday rentals and therefore are not residential. I acknowledge that the appellant's photograph³ shows the window display at 24 Leinster Terrace (No 24) advertising a mix of holiday rentals and student flats. However, I saw that each property at Nos 5-10 contained a number of units. I have nothing to demonstrate which properties or units are holiday lets and which are student accommodation, as asserted.

¹ Appendix 3 -0717 (03) 902 and Appendix 4 - 0717 (03) 902A

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

³ Appendix 1

11. While hotel accommodation is predominantly short-term or transient, student accommodation is, to all intents and purposes, the student's permanent place of residence during term time, with the accommodation occupied between September and June as outlined in the appellant's statement. I am of the view that this period of accommodation is therefore not transient but a place of residence and is therefore residential.
12. Even if some units within Nos 5-10 are holiday rentals, the evidence before me does little to persuade me that the windows directly behind the appeal property and within Nos 7 and 8 are not student accommodation. Consequently, there is an equal expectation of privacy as with any other type of residential accommodation.
13. Given my findings, I am therefore required to assess whether the living conditions of existing occupiers are likely to be affected by the use of the proposed development.

Living conditions

14. No 3 is a mid-terrace three-storey mews house. There is no dispute that the mews houses are surrounded by buildings within close proximity to one another or that the proposed terrace would be located approximately 6 metres from the rear windows of properties in Craven Hill Gardens.
15. I saw that within the rear elevation of No 3 on the second floor, there is a clear glazed window. The appellant's existing plans, submitted alongside the appeal, show that this was previously located to the rear of the bathroom. Given the solid nature of the rear wall to the bathroom, as shown on the submitted plans, it's likely that the primary purpose of this window was to provide light to the lower floors of No 3 via an internal lightwell and not provide direct views towards the rear of Craven Hill Gardens and specifically Nos 7 and 8.
16. Without direct access to the roof, this vantage point on the second floor did provide me with direct views towards the rear of Nos 7 and 8. When standing back from this window, my view was limited due to the size of the aperture. Whilst I saw parts of a number of windows and a large section of brickwork, my view was predominantly fixed. However, the closer I moved towards the window, the more I could see of the rear elevation of Craven Hill Gardens. From this angle, I saw a number of windows in their entirety over several floors. I also saw that the window coverings to these windows were varied, and in the case of the rooms where the curtains were either open or there were none visible, I was able to see directly into each room. Several rooms had domestic paraphernalia such as plants and shopping bags. Whilst I have nothing before me to demonstrate the layout of Nos 5-10, from my observations, these rooms were most likely habitable or linked to habitable accommodation.
17. I have found above that units within Nos 7 and 8 are residential accommodation and, as such, there is an equal expectation that occupants of those units are afforded good levels of privacy. The proposed roof terrace would be located above the existing living accommodation and at a higher level than the second floor from where I could observe. Submitted plans show that with the exception of the black painted balustrade, users of the area would have predominantly unobstructed views towards Nos 7 and 8.

18. Given the proximity of these windows and height of balustrade, the use of the proposed roof terrace would provide direct views into several clear glazed windows within Nos 7 and 8, and therefore likely erode the current levels of privacy that occupants of these rooms currently experience.
19. I am mindful that there is currently a degree of overlooking from the second-floor window into Nos 7 and 8; however, from my observations, such views are unlikely to have the same impact as the proposal. This is because views from this window are restricted. It would also be unlikely that somebody would be looking out the window at close range for an extended period of time, unlike the proposed roof terrace, which would enable a number of people to have largely unobstructed views towards the rear of Nos 7 and 8 for prolonged periods.
20. I acknowledge that a number of properties on Leinster Mews have roof terraces as shown in the appellant's photographs, and surrounding properties have windows to the rear which overlook the mews and existing roof terraces. I also acknowledge that occupants of properties with roof terraces will likely have the opportunity to look over towards these properties. However, I have nothing to demonstrate that properties on Lancaster Gate are residential dwellings, or that the proximity and orientation of windows to the current roof terraces are similar to the appeal before me. I therefore cannot be certain that the circumstances in those examples are comparable to the appeal before me.
21. Furthermore, while properties on Craven Hill Gardens currently overlook the rear elevation and roofscape to Leinster Mews, from the evidence before me, there are currently limited opportunities for occupants of No 3 to overlook the rear of Craven Hill Gardens. Moreover, I have little before me to persuade me that the relationship between 7 Leinster Mews and properties directly behind is the same as with No 3.
22. For these reasons, I conclude that the proposal would have a harmful effect on the living conditions of existing nearby residents. I therefore find conflict with Policy 7 of the City Plan, which seeks, amongst other things, to protect privacy and prevent overlooking.
23. The Council contend that the proposal would also be contrary to City Plan Policy 42. However, this Policy relates to design, and given that this main issue relates to living conditions, this policy, in my mind, is not directly applicable.

Other Matters

24. Even if planting were considered to be a suitable solution at 41 Great Pulteney Street, the Council contend that this was shown on an existing roof terrace⁴. This is substantially different to the appeal before me to be directly comparable. The appeal scheme has been determined on its own merits, taking account of the site-specific circumstances.
25. The absence of objection does not render the scheme acceptable. Furthermore, the absence of harm with regard to noise and disturbance, highways and sustainability are neutral matters in the overall planning balance, as this would be a likely requirement of a well-designed development.
26. I acknowledge that access to outside amenity space would be a benefit for future occupiers of No 3. Whilst I am sympathetic to this, I am also mindful that this is a

⁴ 17/00612/ADFULL

private benefit and a grant of planning permission for the roof terrace would result in unacceptable harm to the living conditions of the occupiers of Nos 7 and 8.

27. I also acknowledge that there would be some heritage benefits through the replacement of the windows and that there would be no obvious change to the current separation.
28. Even if future users of the roof terrace would be overlooked by existing occupiers, I have found above that the development conflicts with the development plan, and I attach substantial weight to this finding against the appeal.

Conclusion

29. For the reasons set out above, and having had regard to all other matters raised, the proposal conflicts with the development plan taken as a whole. There are no other material considerations which indicate that the decision should be made other than in accordance with the development plan. I conclude that the appeal should be dismissed.

L Clark

INSPECTOR