

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 7 December 2021	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved Marylebone High Street	
Subject of Report	28 Harley Place, London, W1G 8LZ		
Proposal	Use of the building as a dentist (Class E) for a temporary period of ten years.		
Agent	Logic Planning		
On behalf of	Harry Shiers		
4	21/05280/FULL	Date amended/ completed	2 August 2021
Date Application Received	2 August 2021		
Historic Building Grade	Grade II		
Conservation Area	Harley Street		

1. RECOMMENDATION

Refuse planning permission – loss of residential floorspace/unit.

2. SUMMARY

28 Harley Place is a Grade II listed building, on lower ground, ground and first floors, within the Harley Street Conservation Area and the Harley Street Special Policy Area. Personal permission was granted on 15 September 2011 for the mixed use of the building for residential and medical purposes (sui generis use), with the lower ground floor studio flat occupied by the practice dentist. Prior to the granting of this permission, the property had been in lawful use as single dwelling house. In early 2012 the entire building was converted to use as a dental surgery (at that time a Class D1 medical use). In this case, as a period of ten years has not elapsed, this medical use would not be lawful and the lawful use of the building remains as a single family dwelling house (Class C3).

Planning permission is now sought for the use of the whole property as a dental surgery (Class E).

The key issue for consideration is:

- The acceptability of the proposal in land use terms

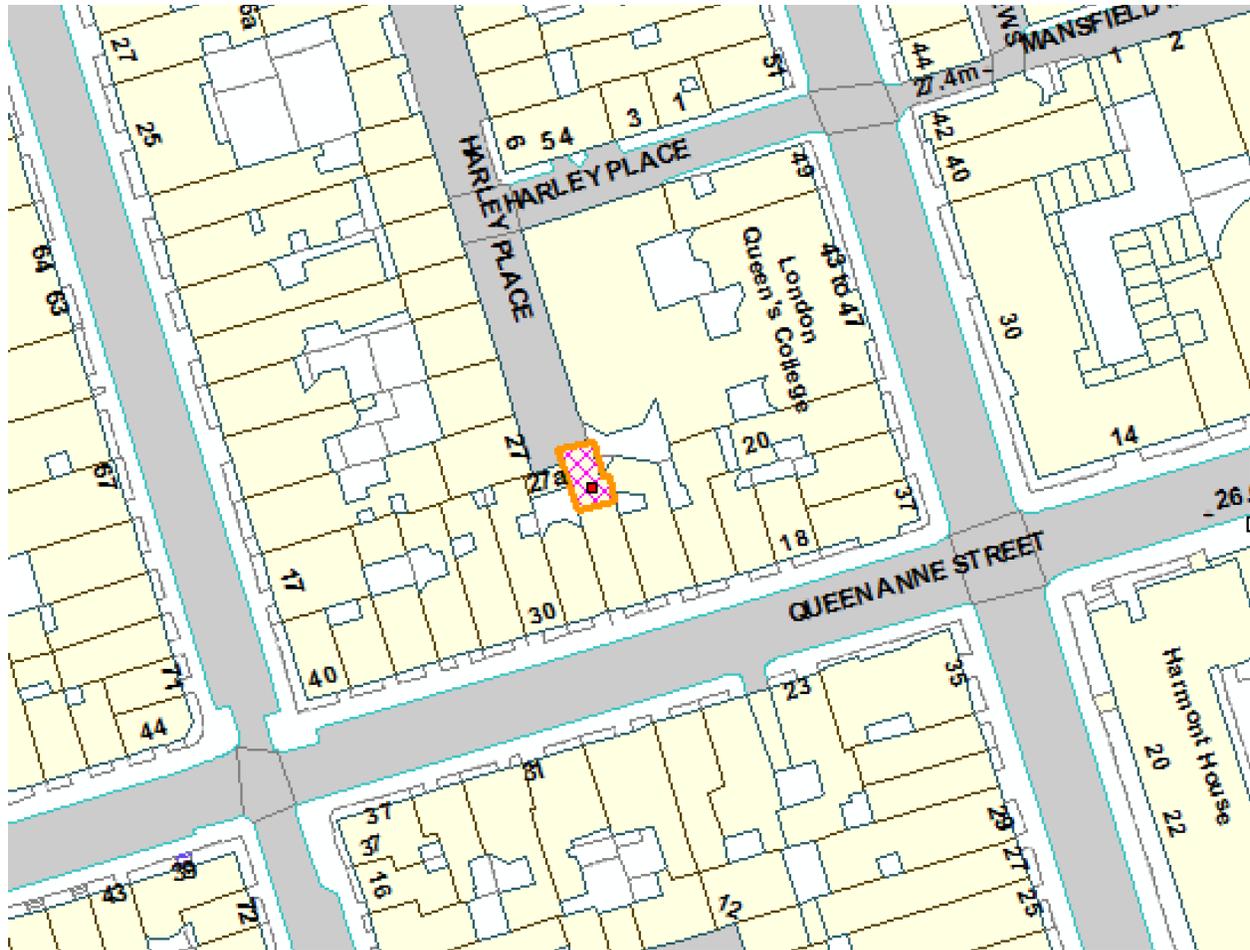
The proposal is considered unacceptable given the loss of a residential unit and floorspace contrary

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to the relevant policies of the City Plan . It is not considered that the submissions made by the applicant in support of the scheme justify a departure from adopted policy and the application is therefore recommended for refusal.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

COUNCILLOR SCARBOROUGH

Letter of support on the following grounds:

- Application will have no impact on housing provision in the borough.
- Supports the increase in medical floorspace in the Harley Street Special Policy Area.
- Amended operational requirements for dental surgeries, and as another dentist is also working from the property, have increased the demand for the medical floorspace.

COUNCILLOR BOTT

Supports refusal of the application on land use grounds.

MARYLEBONE ASSOCIATION

Any response to be reported verbally.

PLANNING ENFORCEMENT

Serving of an Enforcement Notice has been authorised.

WASTE PROJECT OFFICER

Details of waste storage provision required.

HIGHWAYS PLANNING TEAM

No objection.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 22 Total No. of replies: 7 No. of objections: 1 No. in support: 6

Support on the following grounds:

- Attend the dentist and welcome the retention of the service.
- Consider the live/work unit unfeasible due to poor standard of accommodation and increased demands of medical use
- Freeholder (Howard de Walden) will not allow use as a residential unit.

Objection on the following grounds:

- Loss of a residential unit in Westminster.
- Use as a dentist has resulted in increased footfall and traffic in the mews to the detriment of the amenity of local residents.
- Failure to comply with conditions on the 2011 consent for the mixed medical/residential use.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

28 Harley Place is a Grade II listed mews building, formerly connected to 26 Queen Anne Street. The building is located at the southern end of Harley Place, which is accessed from Harley Street. The property, on lower ground, ground and first floors, is sited within the Harley Street Conservation Area and the Harley Street Special Policy Area.

6.2 Recent Relevant History

10 July 2003: Permission granted for internal and external alterations and extensions to the dwelling house at 26 Queen Anne Street and the creation of a separate lower ground and ground floor dwelling house at the rear (80 sqm), accessed from Harley Place (03/01248/FULL).

This permission was completed and resulted in the creation of the single family dwelling at 28 Harley Place, which is subject of this application.

15 September 2011: Permission granted for the use of the building as a studio flat and dental surgery (sui generis use). (11/03771/FULL). The approved plans show a studio flat on the lower ground floor (38 sqm), a ground floor surgery and reception (40m sqm) and a sterilization room and surgery on the first floor (35 sqm) .

This permission was subject to various conditions including Condition 3, which required the approved medical floorspace to be used as a dental surgery only and Condition 6, which stated that only Mr Harry Shiers (the applicant) could carry out the approved use.

The applicant has advised that the lower ground floor was never occupied for residential purposes, pursuant to the 2011 permission, and that the entire premises has only ever been occupied for medical purposes. In this case, the Council's view is that the 2011 permission was never implemented and that the lawful use of the building is as a single family dwelling house.

On 13 January 2012, the Council determined that listed building consent was not required for the retention of internal alterations on all floors ,including the creation of an internal mezzanine floor at first floor level on the basis that these internal works had no impact upon the special interest of the listed building as the only areas of interest were the roof and external walls. The submitted plans show a dwelling house with a bedroom and bathroom on the lower ground floor, a ground floor reception and bedroom and a first floor kitchen and reception.

In February 2020, the Council issued a Planning Contravention Notice relating the unauthorised use of the building as a dental surgery. An application to regularise the use of the building was submitted in response to these enforcement investigations.

5 July 2021: Permission refused for the use of the building as a dentist (Class E). (21/01759/FULL) – loss of housing contrary to policy 8(C) of the City Plan . No

justification provided for a departure from adopted policy.

Authority has been granted to serve an enforcement notice requiring the use as a dental surgery to cease within 6 months of the date of the Notice. The serving of the Enforcement Notice is being held in abeyance pending the determination of the current application.

29 October 2021 : Enforcement cases closed relating to non-compliance with conditions on the 2011 permission (waste/recycling storage arrangements and opening hours) on the basis that as the 2011 permission was not implemented, the use of the building is not controlled by conditions attached to this permission.

7. THE PROPOSAL

Permission is now sought for the use of the building as dental surgery (Class E), for a temporary period of ten years. The applicants propose that any permission should be personal to them, enabling them to continue operating from the premises until their retirement.

8. DETAILED CONSIDERATIONS

8.1 Land Use

Provision of Medical Use

Policy 17 of the City Plan considers 'community infrastructure', which would include dental surgeries. The policy provides protection to existing community infrastructure uses where the proposal is for a change to other uses. New community infrastructure and facilities are supported where there is an identified present or future need. New facilities should be of a nature and scale to meet identified need and should be sufficiently flexible to meet the requirements of providers, which may change over time.

The application premises is located within the Harley Street Special Policy Area (SPA). . Policy 22 of the City Plan states that, 'development in the Harley Street SPA will support and enhance its continued role as an international centre of medical excellence, complemented primarily by residential use' and that "proposals for additional floorspace to upgrade or provide new medical facilities, patient care and patient accommodation, will be supported subject to impact on townscape and heritage".

The applicant has provided some information in support of the temporary change of use which is similar to that submitted with their previous application. The applicant's case is as follows:

- In 2012, when works were being undertaken to convert the premises to the approved residential/medical use, the Care Quality Commission issued directives to dentists requiring the provision of a segregated area for the sterilisation of equipment. To prevent the requirement to provide this facility from impacting on the surgery rooms, it was created on the lower ground floor. Due to potential noise and vibration issues, it also became apparent that the equipment used to power the surgery compressor and suction unit could not be housed on the first

floor, and this was also located on the lower ground floor.

- The use of the remainder of the lower ground floor for residential purposes was considered but it was concluded that this was impractical due to poor natural light and ventilation. The remaining space was therefore used for general storage. The internal fit out was completed in 2012 and the practice opened in the same year.
- In 2016, another dentist relocated from premises in Cavendish Square (which were subjected to proposals for residential development) to the application premises, increasing space demands.
- From 2018, following the closure of another surgery where they practised. the applicant increased their time operating from the application premises and the storage room was converted to provide another surgery room in 2019.
- As a result of Covid 19, additional operational guidance and regulations were issued in 2020, including the requirement for increased breaks between appointments to enable the ventilation of the surgery rooms. Given the small size of the premises, this requires the use of all surgery rooms to comply with the guidelines, including the use of the lower ground floor.

A number of letters of support have been received which confirm that the surgery is well run and acknowledge that it provides a service to the local community. These comments are noted. The principle of creating new medical floorspace within the Harley Street SPA is acceptable in principle in land use terms but any such proposals must be considered in the context of other Plan policies, including those which protect the existing use and those relating to amenity and highway concerns.

However, there is no provision within City Plan housing policies, see below, which would allow for the change of residential accommodation to medical use.

Loss of Residential Use

The 2011 permission, was made personal to the applicant and was granted on the basis that it provided a live/work unit for a dentist who had been practising locally for a number of years; retained a residential unit on the site and provided a small medical facility which would deliver a recognised local service within the Harley Street SPA. These particular circumstances were considered to justify the loss of residential floorspace, which was otherwise contrary to policy.

As stated above, on the basis that the 2011 permission was not implemented, the lawful use of the property is as a single family dwelling (Class C3) (approximately 110 sqm).

City Plan policy 8, parts C and D state:

“ C .All existing residential units, uses, floorspace and land will be protected, except where:

1. the reconfiguration or redevelopment of supported or affordable housing would better meet need; or

2. non-family sized housing is being reconfigured to create family sized housing.

D. The change of use of any type of housing to temporary sleeping accommodation on a permanent basis will not be permitted.'

Para 8.1 of the Plan confirms that 'achieving Westminster's housing targets to help meet growing and diversifying housing need is a key priority of this plan.'

The previous application for the use of the building as a dental surgery (Class E) was refused on 5 July 2021 on the following grounds:

'Your development would lead to a loss of housing which would not meet Policy 8(C) of the City Plan 2019 - 2040 (April 2021). We do not consider that the circumstances of your case justify an exception to our policy.'

The current proposal differs from the previous application in that it is now for a temporary change of use for a period of ten years. As previously, the applicant contends that the proposal would not have any adverse impact on the borough's housing stock or affect future housing delivery as:

- the studio flat approved in 2011 could only be occupied in association with the dental surgery use, as part of a single unit comprising medical and residential uses (sui generis), with permission made personal to the applicant. In these circumstances, the flat was not available for separate occupation as part of the general housing stock.
- the approved studio flat had poor levels of natural light/sunlight and would not provide a good standard of accommodation. It did not provide family sized housing or affordable housing and did not provide dedicated cycle storage. Comments regarding the poor standard of accommodation offered by the studio flat have been made by supporters of the application.
- the temporary loss of a single residential unit (albeit part of a mixed residential/medical use) would not have a significant impact on the Council's ability to meet its housing targets, nor affect the Council's five-years housing land supply. Data published during the examination period of the new City Plan shows that 'Westminster has in excess of five years of housing supply in the period 2020/21 to 2024/25, namely 5.27 years'.
- The 2011 permission was granted on the basis that the use of the property as a separate dwelling was not a longstanding use (since 2003 permission)

The 2011 permission retained a residential use on the site and was only approved by the Planning Committee on the basis of the 'exceptional circumstances' presented by the applicant. The applicant (Dr Shiers) confirmed, in a letter presented to the Planning Committee, that they lived at 75 Harley Street, and had a dental practice in Cavendish Square but wished to consolidate by creating a live/work unit at 28 Harley Place.

Given the Council's view that the 2011 permission for the live/work unit was not implemented, the proposal involves the loss of a mews house (approximately 110 sqm),

rather than the loss of a studio flat. within the live/work unit. Comments concerning the standard of accommodation offered by the studio flat, which have also been made by supporters of the application, would only be relevant if the 2011 permission had been implemented.

However, in relation to the applicant's current assertions that the 'live' element (38 sqm) of the approved live/work unit provided sub-standard accommodation, it is noted that this is the layout which they applied for. Additionally, the character of a live/work unit is such that the occupier of the residential floorspace would also have unrestricted access to the remainder of the unit. Policy 11 of the City Plan 'Innovative Housing Delivery' supports the creation of new housing delivery schemes but recognises that the accommodation would not be suitable for general housing stating. in paragraph 11.9 ,that:

'because purpose-built shared living schemes (including live/work developments) will have been designed to meet a specific demand, the layout is likely to mean that, without significant adaptation, changing the development to meet an alternative residential use will result in a failure to meet the minimum space standards. To protect residential amenity, we may therefore use legal agreements or conditions to prevent shared living developments from converting to other housing types.'. Nevertheless, the studio flat, at 38m², is close to the minimum floorspace requirements for a studio flat (37 or 39 sqm) set out in the London Plan.

While the benefits of the proposed social and community use are acknowledged, the loss of a residential unit, until the end of 2031, would be contrary to the Council's longstanding objective, as set out in Policy 8 of the City Plan, to maintain the existing housing stock. As previously, it is not considered that the arguments put forward in support of the scheme are sufficient to justify a departure from this policy, even on a temporary basis. An objection has also been received from a neighbouring resident on these grounds and, for the reasons outlined above, the application is considered unacceptable on land use grounds.

8.2 Residential Amenity

City Plan Policy 7 requires new development to be 'neighbourly' and to safeguard the amenity of neighbouring occupiers. Policy 33 deals specifically with the impact of noise from site activities, plant and servicing.

Council Tax records and the Electoral Register indicate that the remainder of properties in the mews are in residential use. An objection has been received from one neighbouring resident on the grounds that the existing use has resulted in an increase in pedestrian footfall and footfall and vehicular traffic within the mews, to the detriment of residents' amenity. The dental practice is relatively small and it is anticipated that the vast majority of patients would visit the premises on foot or would use public transport. Given the likely number of visitors to the site during the course of the day, whilst the use would result in some increase in pedestrian traffic, any increase in vehicles numbers is likely to be negligible, and it is not considered that there would be a material loss of amenity to neighbouring residential properties arising from the use. It is noted that the previous application was refused on land use grounds only.

Had the application otherwise been considered acceptable, a condition would have been recommended to restrict premises opening hours to between 0800 and 1800 on Monday to Friday only.(excluding Bank Holidays and public holidays). These are the same restrictions as were imposed on the 2011 permission, for the live/work unit, although it is noted the neighbouring residential occupier says the dentist is open later into the evenings. With this restriction in place, it is considered that the amenity of the residential occupiers in the mews would be protected.

8.3 Transportation/Parking

The Highways Planning Manager has raised no objection to the proposals. Given local parking restrictions, where parking is limited to Repark permit holders only, and the excellent links to public transport, they consider that the majority of patients are likely to access the site on foot. While there is likely to be some increase in pedestrian footfall, the proposal would have a negligible impact on parking demand in the vicinity and would not adversely affect the operation of the highway.

8.4 Economic Considerations

Any economic benefits arising from the proposal are welcomed.

8.5 Access

There is no level access to the building, with a step at the front entrance. Given the listed status of the building and site constraints it is not considered that level access could be provided. The applicant has advised that assistance is provided to anyone needing help accessing the property about that if level access is required, e.g.. by wheelchair users, patients would be directed to a colleague's surgery wherer this can be provided.

8.6 Other UDP/Westminster Policy Considerations

Refuse /Recycling

The Cleansing Manager has requested that a condition be attached to any permission to require the submission of detailed drawings to show suitable storage for waste, recycling and medical waste.

8.7 Westminster City Plan

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with s.38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan adopted in March 2021 and, where relevant, neighbourhood plans covering specific parts of the city (see further details in Section 8.9). As set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

8.8 Neighbourhood Plans

Not relevant

8.9 London Plan

The London Plan policies, relevant to the consideration of this report, are:

Policy H8 'Loss of Existing Housing' which emphasises the importance of retaining good quality existing housing. The requirement relating to existing housing states:

A Loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace.

Policy S2 'Health and Social Care Facilities' identifies that London's health care system services are vital to maintaining and improving Londoners' quality of life, and that this policy facilitates this by supporting the integrated service delivery of health and social care facilities and services. Part B of the policy states:

B Development proposals that support the provision of high-quality new and enhanced health and social care facilities to meet identified need and new models of care should be supported.

8.10 National Policy/Guidance Considerations

The City Plan 2019 - 2040 (April 2021) policies referred to in the consideration of this application are considered to be consistent with the NPPF 2019 unless stated otherwise.

8.11 Planning Obligations

Planning obligations are not relevant to the consideration of this application.

8.12 Environmental Impact Assessment

Not relevant to a scheme of this scale and nature.

8.13 Other Issues

Several respondents have commented that the building owner (Howard de Walden Estate) would not consent to the conversion of the applicant's' lease for residential purposes, as this would allow for tenant enfranchisement. On this basis, they contend that the proposal does not present any risk to the loss of a high-priority form of housing (family housing and/or affordable housing) in the area. This issue has not been raised by the applicant

The property was a dwelling house prior to the granting of the 2011 permission for the mixed residential/medical use and, on the basis that this permission was not implemented, this remains its lawful use in planning terms. The 2011 permission was also made personal to the applicant, with an expectation that the premises would revert to residential use. Additionally, the current application is for a temporary change of use,

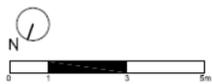
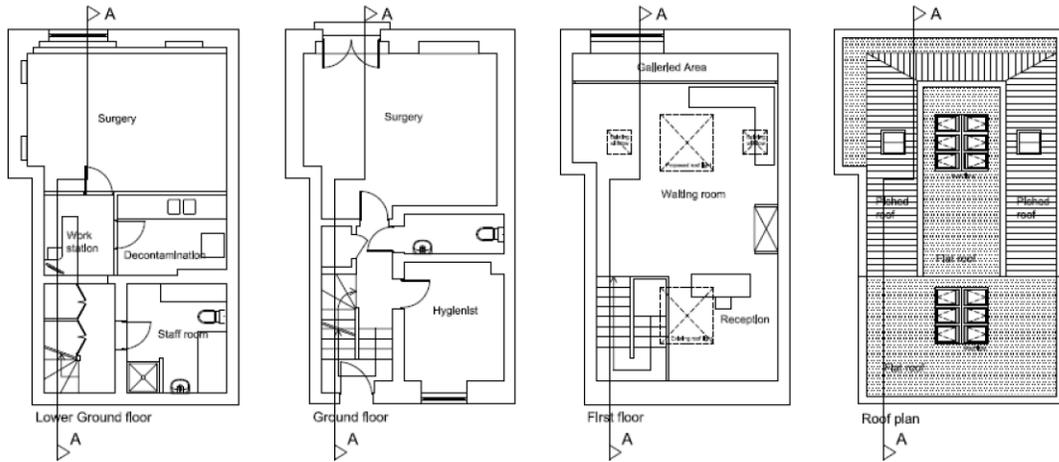
in which case the building would automatically revert back to the lawful residential use upon cessation of any approved temporary medical use. In this case the lawful use of the building is/or would be for residential purposes and its use for non-residential purposes, whether or not permitted by any lease, would not be lawful in planning terms and would be subject to enforcement investigations..

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: SARA SPURRIER BY EMAIL AT sspurrier@westminster.gov.uk

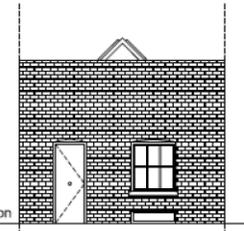
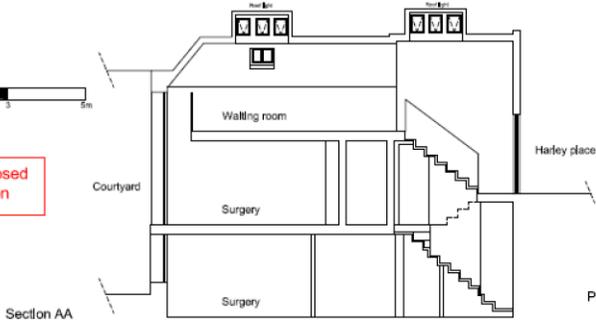
9. KEY DRAWINGS

Proposed Dentist Use:



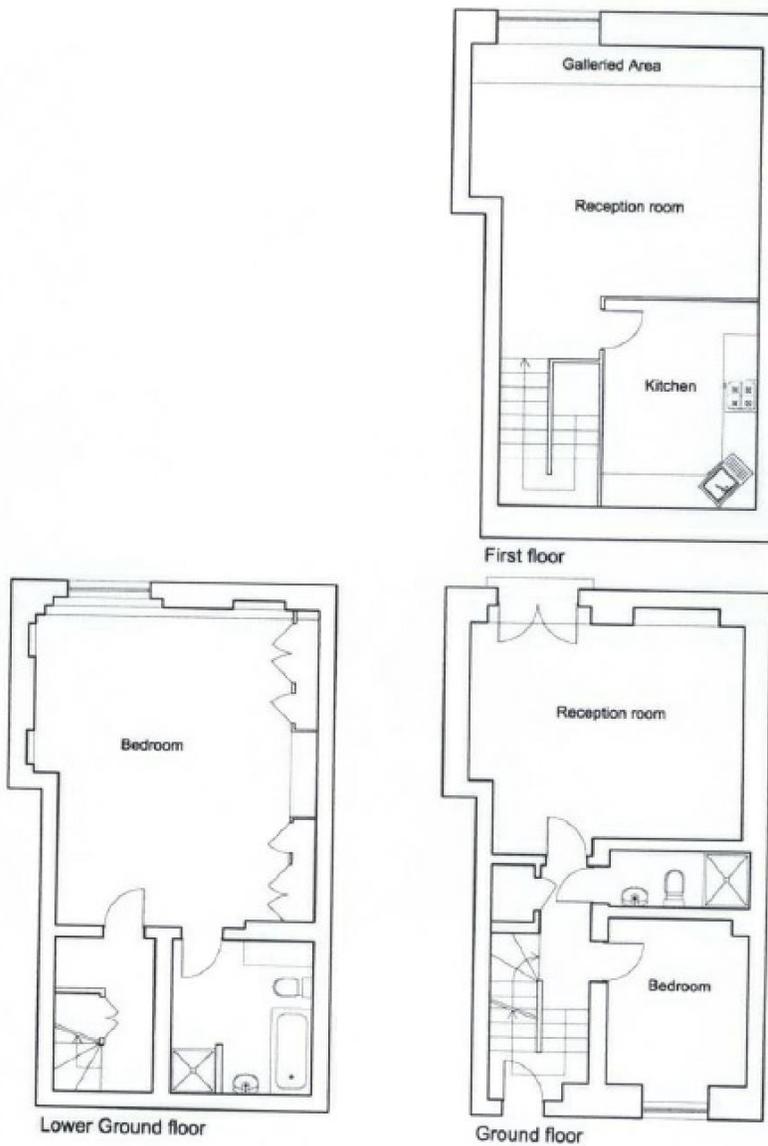
Existing and Proposed Plans and Elevation

Existing 2021
Scale 1:100



Proposed Elevation

Existing Lawful Residential Use:



Lower Ground floor

First floor

Ground floor

Existing

DRAFT DECISION LETTER

Address: 28 Harley Place, London, W1G 8LZ

Proposal: Use of the building as a dentist (Class E) for a temporary period of ten years.

Reference: 21/05280/FULL

Plan Nos: Drawing: Existing and Proposed Plans and Elevations.

Case Officer: Matthew Giles

Direct Tel. No. 020 7641
07866040155

Recommended Condition(s) and Reason(s)

Reason:

- 1 Your development would lead to a loss of housing which would not meet Policy 8(C) of the City Plan 2019 - 2040 (April 2021). We do not consider that the circumstances of your case justify an exception to our policy. (X04AD)

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, London Plan (March 2021), planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.