

Appeal Decision

Site visit made on 6 February 2017

by R Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 March 2017

Appeal Ref: APP/X5990/W/16/3162798

12 Bourdon Street, London W1K 3PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Alice Prentice against the decision of City of Westminster Council.
 - The application Ref 15/10035/FULL, dated 28 October 2015, was refused by notice dated 17 May 2016.
 - The development proposed is described as 'consent for the conversion of a single commercial garage into an A1 retail unit. The design provides an unobtrusive new secondary glass front behind the existing garage doors with a seamless sliding system to contain the existing doors'.
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Decision

1. The appeal is allowed and planning permission is granted for use of the ground floor as a retail unit (class A1) and alterations to the ground floor front elevation, at 12 Bourdon Street, London W1K 3PG, in accordance with planning application Ref 15/10035/FULL, dated 28 October 2015, subject to the conditions set out in Annex A to my decision.

Procedural Matter

2. The description of development set out in the banner heading reflects that on the appeal application form. However, in my formal decision, I have used the Council's description of development, as set out on its decision notice, dated 17 May 2016, as it more accurately reflects the development sought. I note that the appellant, in section E of its appeal form, refers to the same description.

Main Issues

- Whether the appeal development would preserve or enhance the character or appearance of the Mayfair Conservation Area and the locality generally;
- The effect on the living conditions of neighbouring occupiers with regard to noise and disturbance; and
- The effect on the safety of highway users.

Reasons

Character and Appearance

3. The appeal site includes the ground floor of a two storey, grade II listed mews building. It sits within a row of similar buildings and is sited within the Mayfair Conservation Area. It is also located within the Core Commercial Central
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Activities Zone (CAZ), which, the Council states makes a significant contribution to London's World City Status. In the preamble to Policy S21 of the Westminster's City Plan (2016) (CP), it states that it is characterised by an intense level and range of activities. The appeal site is in use as a commercial garage (B8); a matter that is not disputed by the two main parties.

4. CP Policy S1 promotes uses consistent with supporting the vitality, function and character of the mixed use character of the CAZ. In paragraph 3.6 of the preamble to that policy, it states that in seeking mixed use, potential conflicts may be created, which need to be managed, but concludes that the benefits of genuine mixed use outweigh the difficulties of securing mixed use development. The proposed retail use, as it would attract some visitors, street level interest and generally add to the viability of the CAZ, would be consistent with its vitality, function and character.
5. I acknowledge that this part of Bourdon Street includes predominantly residential uses, but there are other uses very close by. These include commercial uses, such as retail, restaurants and cafes, offices and art galleries, and other uses such as a car park. The land use evidence provided by the appellant lends weight to this finding. Local residents suggest that this locality has a quieter ambience than other localities within the CAZ. I was able to assess this on my site visit and noted that the current mix of uses in the locality results in some level of activity at present. I also noted that some uses are open at night. There is evidence before me of vehicle, pedestrian, construction and commercial activity in the locality. All of this lends weight to its description as having some mix of uses which is reflected in its character and ambience. The small scale of the proposed retail use would not adversely affect that character or appearance and could positively help to enhance a sense of community. It therefore would not compromise the attractions of residential neighbourhoods within the CAZ.
6. The character and appearance of the Mayfair Conservation Area includes a variety of commercial and cultural uses, including retail, along with some residential accommodation, much of which is accommodated in historic buildings. Most are arranged as terraces, which front onto the streets, with a high quality design. It has a generally busy feel. The appeal site, its commercial use and historic fabric and high quality design, contributes to that character and appearance.
7. The retail use proposed, therefore, would not be out of place in the Conservation Area and would add to the rich variety of commercial and retail uses within it. As the proposed external alterations would be limited and conditions could control their detailing, unacceptable harm would not be a consequence. As the proposed use would result in the external doors being open, there would be the potential to better reveal the historic interior of the listed building, which would be a benefit of the appeal proposal. Further, as there is currently a mix of uses in the Conservation Area, the proposed use would not adversely affect its busy feel through additional activity, noise and disturbance. For all these reasons, therefore, the appeal development would preserve and enhance the character and appearance of the Mayfair Conservation Area.
8. In coming to both of these conclusions, I have had regard to a recent planning approval brought to my attention at 20 Bourdon Street. I have considered the

effect of both proposals on the character of the Conservation Area and the locality, particularly with regard to increased activity, noise and disturbance. However, as both uses would complement the mixed and busy character of the CA and the mixed use, albeit quieter ambience of the locality, together, they would preserve the character and appearance of both. As each planning application would be judged on its own merits, no precedence would be set by this appeal.

9. I conclude that the appeal development would preserve and enhance the character and appearance of the Mayfair Conservation Area and the locality generally and would generally accord with Westminster Unitary Development Plan (2007) (UDP) Policy DES9. That policy aims to preserve or enhance the character or appearance of conservation areas and their settings. For the same reasons, it would also generally accord with paragraph 131 of the National Planning Policy Framework (the Framework), which seeks that local planning authorities should take account of, amongst other things, the desirability of new development making a positive contribution to local character and distinctiveness.

Living Conditions

10. The appeal site would be close to residential dwellings, but as I have concluded earlier in my decision, the locality includes a mix of uses, in a central London location and the proposed use would be small scale. The increase in pedestrian visitors would be limited and within the normal daily variations within Bourdon Street. As it is a central London location, vehicle trips generated would be small when compared to existing flows in Bourdon Street. In this respect, I find the study carried out by Urban Flow convincing and I am not persuaded that the additional vehicle and pedestrian traffic and general activity that would be generated would be harmful to those living there.
11. I have taken into account the effect of the appeal proposal on those living above and either side of the appeal site. On the basis of the current use and the small scale of the proposed use and the nature of that use, which would be likely to produce no more noise than a commercial garage, I have no reason to conclude otherwise than it would not adversely affect those occupiers living conditions.
12. I am aware that no acoustic evidence is before me. However, I am able to make a judgement on the basis of the appeal plans, my site visit and the evidence before me. As there is already some activity in the street and some mix of uses, the privacy of nearby residents would not be adversely affected.
13. Locations have been identified where on-street servicing could take place. I was able to assess these on my site visit. On the basis of the scale of the proposed use, the proximity of servicing bays to the appeal site, and the level of existing activity, even though some parts of the highway and property frontages are cobbled, I consider that no harm to the living conditions of neighbouring occupiers would be a consequence.
14. I note the substantial evidence before me of harmful noise and activity in the locality, much of which is generated by anti-social and illegal activity. I have sympathy for the local residents in this regard. However, this is a management issue that is properly dealt with under other legislation and is not a matter for me.

15. I conclude that the appeal development would not adversely affect the living conditions of neighbouring residents, with regard to noise and disturbance. For this reason, it would generally accord with CP Policy S29, S32 and UDP Policy ENV 6. Those policies, together, aim to resist proposals that result in an unacceptable material loss of residential amenity, including noise and promote development that improves the residential environment.

Highway Safety

16. I have already found that the appeal development would be small scale and would attract limited additional vehicle trips. Even though Bourdon Street is narrow and narrows further at the point of the appeal site, as the additional number of vehicle trips would be small in relation to existing traffic flows, no material harm would be likely to the safety of highway users. For this reason and as on-street parking is restricted, a material increase in on-street parking would not be a likely consequence. Although I have some evidence before me indicating some traffic congestion at present, this is mainly related to inconsiderate and illegal parking, servicing and driving; matters controlled under other legislation.
17. As Bourdon Street is a Restricted Parking Zone, servicing cannot take place directly outside the appeal site. It is proposed to be accommodated on-street in the two loading bays that are in Bourdon Street, which I consider are close enough for convenient use. Further, using the local servicing bays, and on the basis of the likely size of servicing vehicles, that arrangement would ensure that servicing vehicles would not interrupt the free flow of traffic along Bourdon Street or reduce the safety of highway users. If those service bays were used, even though some of the footways are narrow no harm would result to pedestrian safety. I am satisfied that on-site servicing could not be accommodated on the appeal site as the appeal site is small and in a tight urban and historic environment. I have limited substantive evidence before me to demonstrate that, on the basis of the small scale of the appeal development, Bourdon Street could not accommodate the servicing proposed.
18. I accept that those with mobility impairment would require a wider passageway than others. However, for the above reasons, I am not persuaded that the proposed servicing arrangements would result in mobility impaired people having to enter the highway and resultant material harm to their safety.
19. The Council raises concern regarding the cumulative increase in pedestrian visitors to the locality, taking into account the appeal proposal and the recent planning permission at No 20. However, I am unconvinced that such an increase in pedestrian flows (less than 30%) would result in harm to highway users. I take the same view of vehicle movements. I have limited substantive evidence to suggest that pedestrian visitors would result in harm in the evenings either.
20. In coming to the above conclusions, I have had regard to the fact that there is no footway in front of the appeal site. However on the basis of existing and predicted traffic flows and the small scale of the appeal proposals, material harm to highway users would not result. I have also taken into account the substantial evidence before me of illegal, anti-social and inconsiderate driving, parking, servicing and other matters, which it is suggested are reducing the safety of highway users and the well-being of residents. However, such

matters are controlled under other legislation and do not alter my conclusions in this regard.

21. I conclude that the appeal proposal would not adversely affect the safety of highway users and would generally accord with CP Policy S41 and UDP Policies TRANS 2 and TRANS 3. Together, those policies together aim to reduce the number, severity and risk of traffic accidents and improve road safety, conditions for pedestrians and for delivery and servicing needs to be met in such a way that minimises the adverse effects on other highway and public realm users.

Other Matters

22. The appeal site includes a grade II listed building. On the basis of my previous findings, the proposed change of use would be appropriate in this location. Further, it would involve only minor alterations to the building. The alterations that would be included would generally retain historic fabric and better reveal the historic interior. On this basis, I have no reason to take an alternative view to the Council that the appeal proposal would preserve the special architectural or historic interest of the listed building and its setting.
23. Whilst the appeal proposal would involve the loss of a commercial garage, no material harm is demonstrated in this respect. No policy is before me to resist such a loss. Further, the existing use is not tied to any other residential or commercial use and no requirement for a minimum standard is before me. On this basis, I have no reason to take an alternative view to the Council on this matter.
24. I have noted the concerns of local residents regarding the way in which the appellant has approached the appeal development and others proposed in the locality. However, this matter does not affect my decision.
25. As I have found that no harm to the living conditions of nearby residents would be a consequence of the appeal, there would be no interference with the human rights of those individuals¹.

Planning Conditions

26. A list of suggested conditions is before me. I have agreed with the imposition of most of these, subject to refinement to improve clarity and ensure consistency with national policy and guidance.² A list of conditions to be imposed is set out in Annex A to my decision.
27. Standard time and plans conditions are required to ensure clarity and certainty in their implementation, even though I note the latter was not suggested by the Council. A condition limiting the time that building works can take place is required to ensure they are not a nuisance to neighbours. Conditions requiring work to the historic fabric to match existing original work and to control the proposed changes to the external doors hinges are required to preserve the character and appearance of the Conservation Area and the special architectural or historic interest of the appeal building. For the same reason details of proposed pipes and services for the WC are required, a matter,

¹ Article 8 of the European Convention on Human Rights

² Paragraphs 203 and 206 of the Framework and PPG paragraphs 21a-001-034

although not raised within the Council's suggested conditions is included in its evidence. For the same reason and to preserve neighbours' living conditions, a condition to control on-site waste storage is required. The floor and tile refurbishment proposed, would be controlled under condition 5.

28. A condition to prevent waste being left on the highway is not reasonable, as waste collection is likely to take place from the highway. If waste were stored on the highway that matter would be covered by other legislation.

Conclusion

29. The appeal development would accord with the development plan. No material considerations are before me to lead me to a different conclusion, other than to determine this appeal in accordance with the development plan. Therefore, it follows that the appeal development would fall within the wide definition of sustainable development, as set out throughout the Framework.
30. For the above reasons, and taking all other matters raised into consideration, I conclude that the appeal should be allowed.

R Barrett

INSPECTOR

Annex A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with approved plans: 21321-01-RP-00-100B page 2, 18 and 19.
- 3) Demolition or construction works, which can be heard at the boundary of the site, shall take place only between 08.00 and 18.00 on Monday to Friday, between 08.00 and 13.00 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 4) All new work to the inside or outside of the building must match existing original work in terms of choice of materials, method of construction and finished appearance, unless differences are shown on the approved plans or required by conditions to this permission.
- 5) No development or works to change the external door hinges, or install pipes or services for the WC shall take place until details of such works have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 6) Before occupation of the proposed retail unit, details of on-site refuse storage shall have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details and retained for that purpose thereafter.