



Appeal Decision

Site visit made on 2 April 2019

by G Jenkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2019

Appeal Ref: APP/X5990/W/19/3220407

20 Berwick Street, London, W1F 0PY

- 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 Red Dog Restaurants Ltd against the decision of Westminster City Council
 - The application Ref 18/08173/FULL, dated 24 September 2018, was refused by notice dated 30 October 2018.
 - The development is described as 'minor alterations to the external shop front window'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The minor alterations to the shop front have already been undertaken and so I have dealt with the development on a retrospective basis. During the course of the appeal the Council has advised that the window is being used as a serving hatch. This is not part of the development subject of this appeal and therefore I have not considered this in my decision-making.

Main Issues

3. The main issues relating to this appeal are the effect of the development on the living conditions of the occupiers of neighbouring residential properties in terms of noise disturbance; on the character and appearance of the host building and whether the development preserves or enhances the character or appearance of the Soho Conservation Area.

Reasons

4. The appeal site comprises the ground floor of No 20 Berwick Street, a three storey mid terrace building located on the Berwick Street near the junction with Broadwick Street. The ground floor has a Class A3/A5 use and is occupied by the Red Dog Saloon restaurant. The upper storeys of the building are in residential use.
5. The site is located in the heart of Soho, a lively area of London. Berwick Street is a popular and busy commercial street characterised by a mix of restaurants, bars, pubs, cafes and retail premises at lower floor levels and residential with office uses on the upper floors. The site falls within the pedestrianised part of Berwick Street where the Berwick Street Market operates, with stalls pitched immediately outside the appeal premises. The site is situated between other

commercial units including the 'My Place' restaurant and the 'Mediterranean Café'.

6. The existing shop front is wooden framed. It comprises a low level panelled timber stall riser, with a panelled window above. The entrance door is aligned to one side and an entrance to the above residential units is to the other.
7. The appeal development seeks to retain the existing central window in the shop front which is hinged and openable, to improve ventilation within the unit.

Living Conditions of the occupants of neighbouring properties and noise disturbance

8. Openable elements to shop fronts are discouraged by the Council on the basis that internal noise can escape and cause nuisance for nearby residents. The site falls within the West End Stress Area, I am aware that a number of neighbouring uses do not have planning permission and therefore the background noise is artificially loud and there is a significant level of noise late at night. I also note that the unit has planning permission for a ventilation system and therefore additional ventilation through the small window should not be necessary.
9. I note that an Acoustic Assessment prepared by ACA Acoustics accompanies the appeal. This demonstrates that when the subject window is open, any change in noise levels to even the nearest residential window is imperceptible and is therefore not be a source of disturbance for neighbouring properties. I find that the Acoustic Assessment constitutes a fair representation based on the surveys and the times of day that these were undertaken.
10. I accept that the anticipated circa 1dB increase in noise is deemed negligible and does not result in material harm to the living conditions of the residents of the upper floor properties, given the existing, busy atmosphere of the street. I find that the audibility is so low that it does not cause harm to noise sensitive properties as regards the controls that are applied to the West End Stress Area.
11. I note the other appeal cases that the Council have referred to however, I am satisfied that acoustic assessment information that has been submitted is sufficiently robust to enable me to come to the view that to come to the view that an unacceptable level of harm does not occur and in considering the totality of the evidence before me.
12. I therefore conclude that the openable element to the shop front does not result in an undue additional source of noise disturbance to neighbouring residential properties and is not therefore be contrary to policies S29 and S32 of the City Plan (2016) and 'Saved' policies ENV6, ENV7 and ENV 13 of the Unitary Development Plan (2007) which seek to ensure minimal noise pollution or harm to residential living conditions.

The character and appearance of the host building and whether the development preserves or enhances the character or appearance of the Soho Conservation Area

13. The site falls within the Soho Conservation Area and although not listed, it is identified as an unlisted building of merit in the Soho and Chinatown Conservation Area Audit (2005) (the Conservation Area Audit). The status is derived from the building's front façade and its contribution to the terrace as a

whole, and to the character and appearance of the area. The buildings in this part of Berwick Street are very mixed and overall the area is characterised by its sometimes chaotic and slightly 'down at heel' feeling. The properties on the east side of the street are very modest and many are in poor condition, but some date from the later eighteenth or early nineteenth centuries and preserve the original small plot sizes. The terrace of shops is generally traditional in nature, with solid timber shop fronts and more traditional openable elements.

14. More modest unlisted buildings also add to the character and quality of the local area. They may make a valuable contribution to the townscape, and can be of architectural interest in their own right or have local historic and cultural associations for example with a famous resident or event. Within the Conservation Area Audit these are identified as 'unlisted buildings of merit'. By definition these properties are considered to be of particular value to the character and appearance of conservation areas and their demolition or unsympathetic alteration will normally be resisted. I find that the building on the appeal site contributes to this character.
15. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
16. I accept that the existing shop front design already benefits from planning permissions (Ref: 15/05140/FULL) and that the appellant claims that the development involves only a minor alteration of the existing shop front window design. The development results in the existing frame being trimmed to allow for a new frame to be fitted with hinges either side of the frame. Whilst I also accept that the central mullion is retained, the casement window increases the bulk of the frame and appears out of keeping within the streetscene.
17. When the window is open, as it was during my site visit, the shop front appears as somewhat of an anomaly in the street scene. The 'hole in the wall' is an incongruous feature within the street scene that appears uncharacteristic of the area, which consists of mostly solid fronted shop fronts. The openable element reduces the solid shop front to a partial void, resulting in harm to the conservation area.
18. The development is modest in size and does not detrimentally affect the relationship with the upper parts of the building, which are somewhat separated from the shop front where the wooden shop front changes to brick above; nonetheless, it is recognised that the building's front façade and the terrace as a whole makes a substantial contribution to the character and appearance of the area.
19. I therefore conclude that the development has an unacceptable effect on the character and appearance of the building, as a non-designated heritage asset. Moreover, it does not preserve or enhance the character or appearance of the conservation area, as a whole. It is contrary to Unitary Development Plan

'Saved' Policies DES 1, DES 5, and DES 9, as regards the strong protection that is afforded to the historic environment through the planning system.

20. For the purposes of the Framework, the development results less than substantial harm to the significance of the conservation area, as a designated heritage asset. Under the Framework, this harm should be weighed against the public benefits, including securing its viable optimum use. In this case, these relate to supporting the on going and long term viability and vibrancy of the area. However, I do not consider these public benefits to be as such that they outweigh the harm.
21. I reach the same conclusion as regards the balanced judgment, which the Framework requires in weighing applications that directly or indirectly affect non-designated heritage assets, having regard to the scale of the harm to the building that arises and the significance of the heritage asset.

Conclusions

22. The harm to heritage assets is decisive. For the above reasons and having considered all the matters raised in evidence, I conclude that the appeal should be dismissed.

Gemma Jenkinson

INSPECTOR