
Appeal Decision

Site visit made on 5 October 2020

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2020

Appeal Ref: APP/X5990/W/19/3242291

Basement and Ground Floor, 16 Garway Road, London W2 4NH

- 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 Mr Cho Ng against the decision of the Council of the City of Westminster.
 - The application Ref 18/07145/FULL, dated 21 August 2018, was refused by notice dated 12 June 2019.
 - The development is described as to gain planning approval for 2x air conditioning units at the rear of the commercial premises, for seating on the shop forecourt and for the changes made to the shop front whilst refurbishing. These include the new white-washed frames with detailed glazing, replacing the hazardous asphalt paving area with tiles that are in keeping with the restaurant theme and changing over the previous menu box to a digital one.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are the effect of the development on:
 - the living conditions of surrounding occupiers, with particular regard to the risk of noise disturbance at 14a Garway Road; and,
 - the character and appearance of the Bayswater Conservation Area.

Reasons

The effect on the living conditions of surrounding occupiers

3. Two condenser units have been fitted to the rear wall of No 16, very close to the boundary wall with the adjoining building, identified in the appellant's Noise Impact Assessment Report¹ as No 14a, a noise-sensitive receiver. The topmost unit is fixed higher than this boundary wall which encloses the rear garden-terrace of No 14a, and a large opening into the dwelling it serves.
4. The Report concludes that noise from the plant could be successfully mitigated to come within the Council's noise standards by a noise-reducing enclosure fixed around the plant. However, there are no details of the enclosure to confirm its performance, its visual impact, or indeed whether it could be fixed in the confined space around the plant. In these circumstances, requiring the enclosure

¹ Planning Compliance Noise Impact Assessment Report, 4 January 2019, by Messrs Venta Acoustics

details by condition would risk the effectiveness of the enclosure, as the security of the mitigation is uncertain.

5. Without the performance specification of the noise reducing enclosures and their mitigating effect when installed, as well as the drawings showing them in position, it is not possible to conclude other than that the noise from the condenser units has an adverse impact on the living conditions of surrounding occupiers and that the development is in conflict with Westminster City Plan 2016 (WCP) S29 and S32, and saved policies of the Unitary Development Plan 2007 (UDP) ENV6 and ENV7 which protect residential amenity, aim to reduce the impact of noise on health and well-being, and require development to minimise and contain noise and protect noise sensitive receptors.

The significance of the Bayswater Conservation Area (CA)

6. The CA is characterised by the variety and high architectural quality of buildings arranged in formal streets and squares which were laid out from the early C19. Though the principal run of shops and commercial premises here is along the busy Westbourne Grove, like many of the streets which join it, the first few buildings which return along Garway Road continue that commercial character. This broad mix of uses, and the softly focused boundaries between them, enriches the attractive character of the CA. In this return section, the elegant and formal classical order of the brick and stucco houses is continued at ground floor by the delicate, timber shopfronts. These animate the appearance of the street and bolster its attractive, small-scale, commercial character. No 16 reflects this character and its appearance enriches the townscape of the CA. It is considered by the Council as a non-designated heritage asset.

The effect on the CA

7. Shopfront: This shopfront contains 4 sections which enclose the restaurant, and a fifth section which has a door to the floors above it. The front to the restaurant appears more solid than the neighbouring shopfronts, beside it. However, while those shopfronts, which also appear to serve non-retail premises, may contain more glass, a large proportion of their glazing has been obscured. In this context, and especially given the use of the ground floor as a restaurant rather than as a shop, the solid: void ratio of the front to the restaurant is compatible with the shopfronts in this section and the overall, commercial character of the CA.
8. The openings of the restaurant front are partially screened with a repeated, fretwork effect of timber mouldings. Whilst this joinery detailing is stylistically different to the façade of the building above it, the division of the width of the shopfront into 5 sections reflects its layout of 3 piers and 2 openings. The solid elements of the restaurant doors have been incised and decorated with applied motifs, not dissimilar from the decorative effect of the elaborately embellished heads of the windows above. The heavy transom between the doors and the fanlights of the restaurant section of the front emphasises the horizontal, like the cornice and brick bands in the facade above.
9. The overall effect of the arrangement of the doors and fanlights, and the detailing of the joinery within the restaurant front is not incompatible with the design of the upper part of the building or with the shopfronts in this section. In respect of the 4 sections which make up the restaurant front, I see no harm to the appearance or the character of the CA.

10. The fifth section of the shopfront however, the section which leads to the floors above the restaurant, has been crudely arranged with a sheet of timber covering the fanlight element above the residential door opening. The strong line of the transom over the restaurant doors halts abruptly, and there is little coherence between the language and detailing of these two sections. In such an exposed front, and especially when viewed against the adjoining building which maintains a single continuous transom across the different sections of its shopfront, this lack of order detracts from the more carefully detailed and architecturally balanced order of the shopfronts which characterise the CA and which are an important part of its significance.
11. Notwithstanding the joinery and arrangement of the shopfront before the changes the subject of this appeal, the crudeness of this fifth section now conflicts with the delicacy and order of the new infilling fretwork across the remainder of the shopfront. Despite this shortcoming, a planning condition for alternative plans for the joinery detailing and its arrangement in the fifth section could secure a more sensitive shopfront which would preserve the architectural significance of the building as well as the appearance of the CA.
12. Forecourt surface: I understand the desire to differentiate the seating area in front of the restaurant from the rest of the street. I also note the surface repairs made. However, a unified footway finish tends to enhance the variety of fronts and buildings in the street scene. Where the footway is visually underplayed by a continuous surface finish acting as a background element rather than as a foreground feature, the architecture and activity of the buildings is uplifted, and their contribution to the colour and character of the CA increased.
13. I saw that some of the shops in Westbourne Grove have retained their pavement lights and some have different surfaces to the main finish of the footway. However, in this section, the frontages of the buildings towards Westbourne Grove continue the concrete paving in the rest of the footway. The street surface beside the front of No14a uses a brick. This finish is not so dissimilar to the concrete street paving and reflects the entrance pier in the street and the brick of the façade of that building. While the tiled finish to the footway for which permission is sought undermines the continuity of the street surface in this section, a planning condition could secure a more unifying and more durable finish, sensitive to the appearance of the CA.
14. Condensers: These are not visible from the public domain. The lower condenser is largely screened by the extension behind the restaurant. The higher condenser is close to the extension roof which reduces its prominence. Though it is visible from the rear windows of the surrounding buildings, given the back yard, street-block context here, and the pipework already visible on the building, the effect on its significance and the appearance of the CA as a whole is not detrimental.
15. While I have found harm to the significance of the building and to the appearance of the CA from the shopfront alterations and the forecourt finish, the National Planning Policy Framework advises that decision-makers should consider whether otherwise unacceptable development could be made acceptable through conditions. For the reasons above, planning conditions could overcome the shortcomings identified and the harm to the appearance of the CA.
16. Therefore, subject to planning conditions, I find that the character and the appearance of the CA, to the desirability of which the Act requires that special

attention must be paid, would be preserved, and the significance of the non-designated heritage asset would not be harmed. There would be no conflict with WCP policies S25 and S28 and saved UDP policies DES1, DES5, DES7, and DES9 which aim to preserve or enhance the character or appearance of conservation areas, seek exemplary standards of architecture and urban design, and which seek paving materials which accord with the character of adjacent buildings and surrounding areas.

Conclusion

17. Subject to conditions, the development would not harm the character or the appearance of the CA or the significance of the building as a non-designated heritage asset. However, the economic and social benefits which the air-conditioning condensers may bring by supporting the use of the restaurant, do not outweigh the harm to the living conditions of surrounding occupiers from their operation. The development is not in accordance with the development plan as a whole. For these reasons, the appeal is dismissed.

Patrick Whelan

INSPECTOR