



Appeal Decision

Site visit made on 17 February 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2021

Appeal Ref: APP/X5990/W/20/3261481

105 Marylebone High Street, London W1U 4RS

- 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 Granger & Co against the decision of City of Westminster Council.
 - The application Ref 20/01028/FULL, dated 13 February 2020, was refused by notice dated 20 April 2020.
 - The development proposed is the Installation of Service Hatch within the Pavement.
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Decision

1. The appeal is allowed, and planning permission is granted for the Installation of Service Hatch within the Pavement at 105 Marylebone High Street, London W1U 4RS in accordance with the terms of the application Ref 20/01028/FULL, dated 13 February 2020, subject to the conditions set out in the schedule attached.

Main Issue

2. The main issue is the effect of the proposed development upon pedestrian movement and safety.

Reasons

3. The appeal site comprises a ground floor unit and an area of pavement in front of it above the cellar of No 105 forming part of the public highway and pavement within a retail and service area of Marylebone High Street. The appeal proposal would allow deliveries to the basement kitchen and store areas without the need to use the main entrance, avoiding conflict with customers and the need to use a narrow single staircase to the basement, providing operational and health and safety benefits.
4. My visit can only represent a brief snapshot in time, which was undertaken with national Covid-19 lockdown rules in place. Many premises were not open and pedestrian and vehicular traffic was light. A survey undertaken prior to Covid-19 restrictions, on a Thursday and Saturday in February 2020, indicates hourly pedestrian flows past the site were between 92 and 476 per hour between 07:00hrs – 11:00hrs on Thursday and between 16 and 495 per hour on Saturday, increasing later in the day. These volumes are categorised as a low flow in the Pedestrian Comfort Guidance for London (2019) (the PCGL).

5. The approximately 1.2m x 1.2m hatch would be installed on the pavement closest to the premises frontage. Outside the appeal site the pavement is approximately 3.89m wide. A bin and bollard are a sufficient distance from the hatch that they would not prevent the greater than the 2.6m width recommended in the PCGL being achieved, and the minimum 2m width in the Manual for Streets, when the hatch is open. This remaining pavement width could comfortably accommodate the higher volumes of pedestrian traffic measured during the survey.
6. Deliveries would take approximately 15 minutes between 07:00 – 10:30hrs. Therefore, the hatch would be used prior to the busiest periods of traffic for short periods. Given the limited duration of use at a less busy part of the day, when open the hatch would not be likely to have a material adverse effect upon pedestrian movement and would maintain the objective of prioritising pedestrian use, and the associated health and environmental benefits this brings. Furthermore, based upon the numbers set out in the pedestrian survey, the use of the hatch could be accommodated satisfactorily even allowing for significant growth in pedestrian numbers.
7. The appellant has submitted an Operational Management Plan (OMP). However, it requires further precision and clarification in respect of matters such as the type and extent of barriers and the duration over which staff would supervise deliveries. A revised OMP to ensure safe supervised operation and the hours of use could be secured by planning condition, which would run with the land and not occupation or ownership. The hatch would be constructed of robust materials and it being maintained as such thereafter is secured by planning condition. Subject to the conditions set out, the development would avoid disruption and maintain safe and efficient pedestrian movement.
8. The appellant is required to obtain consent from the Highway Authority (HA) under section 180 of the Highways Act 1980 prior to any works commencing, and the HA indicated it would not be supportive of an application for consent. However, this is a different consenting regime with different processes under different legislation. As I have found the development acceptable in respect of the land use considerations, this matter does not merit dismissing this appeal.
9. For the reasons set out above the development would not have a harmful effect upon pedestrian movement, convenience, or safety, and therefore would not create a disruption to the use of the pedestrian pavement or degrade the public realm. Therefore, it would not conflict with Policy S41 of the Westminster City Plan (2016) which requires development prioritises pedestrian movement and the creation of a convenient, attractive, and safe pedestrian environment. Policy TRANS3 of the Westminster Unitary Development Plan (2007) aims to improve pedestrian safety, ease, convenience, and directness of movement. The development would not result in an improvement however, it would not be harmful in respect of these matters. Therefore, there would be no material harm as a result of the conflict.
10. The development would also not conflict with the Westminster Way Design Principles and Practice document (2011), in respect of it seeking to promote walking through the design and use of suitable surfaces and materials that aid rather than disadvantage pedestrians, encourage and accommodate more pedestrians on streets, ensuring a minimum of 2m clearway for pedestrians, and minimising clutter.

Other Matters

11. The appeal site and surrounding buildings are located within the Harley Street Conservation Area (HSCA) where there is a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance. The HSCA is characterised by a network of streets and blocks lined by historic tightly knit terraced buildings of a consistent scale. They retain historic features such as stone and stucco elements, window and door surrounds, with a variety of adornments, corbels, balustrades, cornices, and decorative historic gables. Buildings in this part of the HSCA on the high street including the appeal site, retain historic features, while integrating some more modern ground floor commercial frontages. The well-preserved appeal site building makes a positive contribution to the HSCA.
12. The pavements around the appeal site integrate paving on the majority of the width but with long distinguishable sections of concrete glass block pavement for the inner approximately 1.2m adjacent to the buildings, including some with sections with metal surrounds, and occasional service hatches. The pavement makes a limited contribution to the significance of the HSCA. The development would integrate a metal surround with glass concrete blocks to match the alignment of the existing materials at the site. This would be in keeping with the pavement outside the premises nearby and would not detract from the appeal site building. Therefore, the development would preserve the elements that make a positive contribution to the significance of the HSCA, and it would preserve the character and appearance of the HSCA.
13. I have considered the Council's view that the grant of permission would set a precedent for other similar developments. However, each application must be considered on its own merits and given that I have found the development would be acceptable based upon the evidence before me, I can see no reason why it would lead to harmful developments in the area.

Conditions

14. I have considered the Council's suggested conditions in the context of the advice in the National Planning Policy Framework (2019) and Planning Practice Guidance. As well as the standard condition for commencement, for certainty a condition requiring the development to be carried out in accordance with the approved plans is necessary. A condition to require the external finishes in accordance with those set out in plan/drawing Ref 3958-PH01 Rev A and the application form, to be maintained thereafter, is necessary to ensure a satisfactory construction and external appearance, which is maintained thereafter.
15. At my visit it appeared that some of the premises above the commercial units are residential. Therefore, in the interests of the living conditions of neighbouring occupiers it is necessary to impose a condition in respect of the nature of construction works that can take place between certain working hours. Reference to procedures under separate legislation have been removed as the permitted activities are set out in the condition. In the interests of the safe and efficient operation of the pavement it is necessary to impose conditions restricting the hours of use of the hatch and for the hatch to be operated in accordance with a previously approved OMP before its first use. It is not necessary for this to be a pre-commencement condition.

16. Informative advice does not carry legal weight and cannot be used in place of a planning condition. The Council's suggested informative advice in respect of the positive and proactive working is not necessary as this does not relate to the construction or use of the development. As the duties to obtain consent under the Highways Act 1980 is the subject of other legislation, it is not necessary for this to be set out as a planning condition.

Conclusion

17. For the reasons set out above, and having regard to all the matters raised, the appeal should be allowed, and planning permission is granted.

Dan Szymanski

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plan/drawing Ref 3958-PH01 Rev A.
- 3) The materials to be used in the construction of the development hereby permitted shall be those set out on plan/drawing Ref 3958-PH01 Rev A and section 7 of the planning application form dated 13 February 2020, and the development shall be maintained as such thereafter.
- 4) The development hereby permitted shall only be opened and used between the hours of 07:30 – 10:30 Mondays to Saturdays.
- 5) Prior to the first use of the development hereby permitted, an Operational Management Plan detailing the processes for the use of the service hatch, internal storage locations, the scheduling of deliveries and the staffing and safety measures for the use of the hatch, shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the opening and use of the service hatch shall only be undertaken in accordance with the approved Operational Management Plan.
- 6) Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall only be carried out between 08.00 and 18.00 Mondays to Fridays; between 08.00 and 13.00 on Saturdays; and not at all on Sundays, bank holidays and public holidays. Piling, excavation and demolition work shall only be carried out between 08.00 and 18.00 Mondays to Fridays, and not at all on Saturdays, Sundays, bank holidays and public holidays.

End of Schedule.