



Appeal Decision

Site visits made on 22 March 2021 and 7 April 2021

by A Thompson BSC, BTP, MRTPI, MRICS

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/X5990/W/20/3254906

Basement and Ground Floor, NCP Rossmore Court, Park Road, Marylebone, NW1 6XX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Loft Land Holdings Limited against the decision of the City of Westminster Council.
 - The application Ref 20/00349/FULL, dated 16 January 2020, was refused by notice dated 13 March 2020.
 - The application sought planning permission for use of the ground floor and basement for self-storage purposes (Class B8) without complying with a condition attached to planning permission Ref 19/04696/FULL, dated 18 October 2019.
 - The condition in dispute is No. 1 which states that: The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for use of ground floor and basement for self-storage purposes (Class B8) at NCP Rossmore Court, Park Road, Marylebone, NW1 6XX in accordance with the application Ref 20/00349/FULL dated 16 January 2020, without compliance with condition number 1 previously imposed on planning permission Ref 19/04696/FULL dated 18 October 2019 and subject to the conditions set out in **Annex A**.

Procedural Matters

2. As the application that is the subject of this appeal appears to have been made before the breach of condition 1 occurred, I have considered this appeal as a S.73 conditions appeal.
3. The main parties are agreed that the appeal proposal seeks to vary condition 1 to allow an alteration to the approved scheme, *"NAMELY, alteration comprises the replacement of the entrance/exit gates on the southern and eastern elevations, at ground floor level, with roller shutter security entrance doors"*. This outcome can be achieved by amending condition 1 to refer to the following plans: 19041GA_20_2d; 19041GA_20_3c; 19041GA_90_1F, which would

replace the following plans in the approved scheme: 19041GA_20_2c; 19041GA_20_3b; 19041GA_90_1b. The Council has determined the application that is the subject of this appeal on this basis and I shall adopt the same approach.

4. At the time of my site visit on 22 March 2021, I noted that roller shutter security doors had been installed that appear to match the designs shown on Drawing 19041GA_90_1F (Plan 1F). I also noted that both the vehicle entrance and exit doors had plain panels above, rather than the louvred/dummy louvred panels shown on Plan 1F and the pedestrian gate on the south east elevation of the building, next to the vehicle entrance, featured horizontal metal panels, rather than the vertical railing structure shown on Plan 1F. In this appeal I have considered the proposals set out in the plans submitted with application REF 20/00349/FULL.
5. On my site visit on 22 March 2021, I viewed the roller shutter security doors in the open and shut positions. I also visited the appeal site on the 7 April 2021 at about 22:30 to view the site during the hours of darkness, at which time these doors were closed.

Main issue

6. The main issue is the effect that varying condition 1 would have on the character and appearance of the building and the surrounding area.

Reasons

7. Rossmore Court comprises a substantial 1930's 9 storey mansion block. The building is not listed and is not within a conservation area.
8. The vehicular entrance and adjacent pedestrian access, that forms part of the appeal proposals, are located on the south east elevation of Rossmore Court. This elevation is set back some distance from the junction of Park Road and Rossmore Road and is dominated at ground floor level by a very substantial projecting canopy. Most of the area under the canopy is occupied by a flower shop and its extensive display area for flowers, plants and associated products.
9. Given the overall scale of the building, the dominating impact of the canopy and the scale and prominence of the flower shop and display area, the vehicle entrance and pedestrian access points to the appeal site are not substantial or significantly visible features of the building.
10. The vehicular exit from the appeal site is located towards the middle of the southern elevation of Rossmore Court. At ground floor level, there are a series of doors, windows and vents along this frontage which appear associated with the servicing of the building. This frontage adjoins a short service road that runs parallel to, but below the level of, the adjacent Rossmore Road. Again, I do not consider the exit forms either a substantial or prominent feature of this frontage which is dominated by service type activities at ground floor level.
11. The vehicle entrance and exit points of the building previously provided access to an NCP car park. Now they would permit vehicles to gain access to the covered loading and unloading area for the storage facility. During normal working hours the roller shutter security doors would be left open. From 19:00

- each day¹ the doors would be closed, and customers must use a key-pad to gain access to the facility, whether on foot or by vehicle.
12. When closed, the transparent panels in the roller shutter security doors, which account for the majority of the surface area of each door, would allow clear views into the facility and, during hours of darkness, light to escape into the surrounding area. The high degree of transparency of the doors, with the good level of informal surveillance that would be possible, would reduce the opportunity for crime and anti-social behaviour. The appellant's evidence indicates that the transparent panels are made of acrylic glass, a material which would not appear to be used elsewhere in the building. However, the shutters would only be visible for part of the day. Once closed, given the high degree of transparency of the doors, their lack of prominence, and small scale in the context of the building as a whole, their impact on the architectural character of the building would be minimal.
 13. In short, the vehicle access and exit points to the appeal site are not prominent or new features of Rossmore Court. I do not consider the roller shutter security doors shown on the submitted plans would harm the character or appearance of the building. Given its location, I do not consider the proposed design of the pedestrian gate, which would be deeply recessed under the canopy and behind the area used by the adjacent flower shop would have any material impact on the character and appearance of the building. Furthermore, given their very limited scale and the adjoining areas of white rendered wall in both cases, I do not consider that the provision of white louvres above either of the roller shutter security doors would have any material impact on the character and appearance of the building.
 14. In terms of the impact of the roller shutter security doors on the wider area, there is a small retail parade on the north eastern frontage of Rossmore Court and a flower shop on the south east frontage. However, there is no evidence to suggest that the vehicular entrance or exit for the storage facility have ever been used for retail activity. On the contrary, the evidence points towards these vehicle entrance/exits being long-standing, if not original, features of the building. Nor is there any evidence before me to suggest that any part of the southern elevation of the building has been used for retail purposes or is part of a defined shopping frontage or has a wider commercial function which would attract the general public.
 15. Thus, I consider that Policy DES5(C) which refers to new shop fronts to retail or similar premises open to the general public and the Shopfront's Supplementary Planning Document² and the supplementary Design Guidelines for Shopfront Security³, which have also been drawn to my attention, to be of limited relevance or weight in this case.
 16. Clearly design concerns could also arise with the use of solid roller shutters on other premises and in this case, the Council argue that because illumination behind the shutters cannot be controlled and even fire escape lights can be dimmed/automatically switch on/off, the roller shutter security doors would nonetheless appear as a solid fortified frontage at night.

¹ 17:30 on Sundays

² Shopfront's Blinds and Signs – A guide to their Design – Westminster City Council

³ Westminster City Council

17. The evidence from the appellant has explained why the lighting in the loading bay area would be left permanently on in this case. On my late-night site visit on 7 April, I did not observe any customers entering or leaving the facility, but the lights in the loading bay on the ground floor were on. Consequently, it was possible to clearly view inside the facility and light from the loading bay area spilled out in the areas next to the doors, animating that part of the building.
18. In this case, therefore, although the roller shutter security doors would be solid, because they include a substantial proportion of transparent panels and there is a clear prospect that the lights in the building would be kept on permanently, these doors are unlikely to appear as solid fortified frontages.
19. Having regard to these considerations and my earlier finding in relation to the lack of prominence of the appeal proposals in relation to Rossmore Court, I find that the proposed development would not harm the character and appearance of the wider area.
20. In conclusion on the main issue, I find the proposed development would not harm the character and appearance of the building or the surrounding area. Accordingly, I find that the development would accord with policies S28 of the Westminster City Plan 2016 and DES 1 and DES 5 of the Westminster Unitary Development Plan 2007. These policies seek to encourage good design, which amongst other things, ensures any alterations to buildings respect and maintain their character and appearance and that of the surrounding area.

Other considerations

21. My attention has been drawn to two appeal decisions involving the installation of roller shutters in the City of Westminster. However, they differ from the current proposals in a number of material ways: they involve shop/commercial premises within active street frontages, they are both located in conservation areas and proposed the installation of solid shutters that would largely, if not completely, obscure the shopfront/commercial premises behind. Accordingly, I consider that they have limited weight in relation to this appeal.
22. The appellant has suggested that the installation of the type of roller shutter security doors proposed offers operational advantages, both in terms of their fast operation reducing the potential of tailgating by those not authorised to enter the site, and their solid construction better protecting the facility from an ingress of water, wind, dust and traffic soot, than open railings. While these factors provide support for the proposals, I consider they are of only limited weight because these outcomes could also be achieved through an effective management and maintenance routine at the facility.
23. As set out above, I noted at the time of my site visit some differences between the designs of some features shown on plans that are the subject of this appeal and what has been constructed. However, this is not a matter for this appeal and I have determined the appeal on the basis of the submitted plans.

Conditions

24. I have varied condition 1 to provide a full list of plans and other documents that are approved to provide certainty for all parties. Save for the consequential updating of plan numbers referred to in Conditions 6 and 10, all the remaining conditions attached to planning permission 19/04696/FULL have been imposed unchanged.

25. I note the Council has suggested that a condition be imposed that the roller shutters are painted white, in the event the appeal is allowed. I do not agree with the imposition of such a condition as it would obscure the transparent panels that make up the majority of the surface area of the doors, reducing the possibility of informal surveillance both in and out of the facility and preventing light spilling out in the areas adjacent to the doors at night.

Conclusion

26. For the reasons I have set out above, I conclude that the appeal should be allowed.

Anthony Thompson

INSPECTOR

Annex A

Conditions:

1. The development hereby permitted shall be carried out in accordance with the drawings and other documents listed below, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Site location plan,

19041GA_10_1,

19041GA_10_2,

19041GA_20_1B,

19041GA_20_2d,

19041GA_20_3c,

19041_70_1,

19041GA_90_1F,

Construction logistics plan,

Operational Management Plan,

Technical Note from i-Transport

Reason: For the avoidance of doubt and in the interests of proper planning.

2. Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only:

- o between 08.00 and 18.00 Monday to Friday;

- o between 08.00 and 13.00 on Saturday; and

- o not at all on Sundays, bank holidays and public holidays.

You must carry out piling, excavation and demolition work only:

- o between 08.00 and 18.00 Monday to Friday; and

- o not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety).(C11AB)

Reason: To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

3. The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason: As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the

development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development. (R49BA)

4. All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

Reason: To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

5. The self storage hereby approved shall operate in accordance with the submitted operational management plan dated 17.10.2019 V3 at all times.

Reason: To make sure that the use will not cause nuisance for people in the area. This is as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and TRANS 25 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

6. The area at ground floor and basement shown on approved drawings 19041GA_20_2d and 19041GA_20_1B shall only be used for self-storage units. You must not use it for any other purpose, including within Class B8 of the Town and Country Planning (Use Classes) Order (1987) (as amended) (or any equivalent class in any order that may replace it).

Reason: We cannot grant planning permission for unrestricted use within Class B1 because it would not meet COM 11 of our Unitary Development Plan that we adopted in January 2007, and because of the special circumstances of this case. (R05BB)

7. Collection of refuse shall not take place outside the following times: 08.00 - 20.00 hours each day.

Reason: To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan (November 2016) and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)

8. The use hereby permitted shall not have more than a maximum of 500 individual self-storage units within the ground and basement floors.

Reason: To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

9. You must provide the waste store shown on drawing 19041GA_20_1B and 19041_70_1 before anyone moves into the property. You must clearly mark it and make it available at all times to everyone using the storage facility. You must store waste inside the property and only put it outside just before it is going to be collected. You must not use the waste store for any other purpose. (C14DC)

Reason: To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (November 2016) and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

10. The two customer parking spaces shown on drawing No. 19041GA_20_2d must be dedicated for use by the self-storage facility customers and maintained as such for the lifetime of the development.

Reason: To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

11. You must apply to us for approval of details secure cycle storage for customers and staff. You must not occupy the development until we have approved what you have sent us. You must then provide the cycle storage for the life time of the development.

Reason: To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2016 (R22FA)

12. You must carry out the works in accordance with the Construction Logistics Plan listed in the approved documents.

Reason: In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24AC)

- 13.(1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous

details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason: Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission. (R46AB)