



Appeal Decision

Site Visit made on 13 July 2021

by **F Cullen BA(Hons) MSc DipTP MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/X5990/W/20/3254288

57-59 Beak Street, London W1F 9SJ

- 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 Mr Parrish, Smoke and Mirrors Group Ltd, against the decision of City of Westminster Council.
 - The application Ref: 19/08597/FULL, dated 5 November 2019, was refused by notice dated 11 March 2020.
 - The application sought planning permission for '*use of basement and part ground as dual alternative shop (Class A1) or restaurant (Class A3) and installation of roof level kitchen extract plant. Alterations to shopfront. Erection of extensions at rear second, third and fourth floor levels in order to enlarge existing office (Class B1). Installation of an internally routed extract duct terminating above roof level. Relocation of existing plant and screening at roof level*', without complying with conditions attached to planning permission Ref: 18/08655/FULL, dated 20 December 2018.
 - The conditions in dispute are Nos 1 and 13 which state that: Condition 1: *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, Plan Nos: 1871-PL113, 1871-PL114, 1871-PL115, 1871-PL116, 1871-PL117, 1871-PL118, 1871-PL119, 1871-PL121, 1871-PL123, 1871-PL124, 1871-PL125; and Condition 13: You must apply to us for approval of details of how waste is going to be stored on the site. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then provide the waste store in line with the approved details, and clearly mark it and make it available at all times to everyone using the premises. You must not use the waste store for any other purpose. (C14CD).*
 - The reasons given for the conditions are: Condition 1: *For the avoidance of doubt and in the interests of proper planning*, and Condition 13: *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).*
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Decision

1. The appeal is allowed and planning permission is granted for use of basement and part ground as dual alternative shop (Class A1) or restaurant (Class A3) and installation of roof level kitchen extract plant. Alterations to shopfront. Erection of extensions at rear second, third and fourth floor levels in order to enlarge existing office (Class B1). Installation of an internally routed extract duct terminating above roof level. Relocation of existing plant and screening at roof level, at 57-59 Beak Street, London W1F 9SJ, in accordance with the application Ref: 19/08597/FULL, dated 5 November 2019 and the plans

submitted with it, without compliance with condition numbers 1 and 13 previously imposed on planning permission Ref: 18/08655/FULL dated 20 December 2018 and subject to the conditions set out in the schedule attached.

Preliminary Matters

2. Following the determination of the applications and during the course of the appeal, the Westminster City Plan 2019 – 2040 (the WCP) was formally adopted in April 2021; the London Plan 2021 (the LP 2021) was formally adopted in March 2021; and a revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. The WCP replaces the Westminster City Plan 2016 and the City of Westminster Unitary Development Plan 2007; the LP 2021 replaces the London Plan 2016; and the Framework replaces the 2019 version.
3. The main parties have been given the opportunity to comment on the implications of these changes for the appeal. I have had regard to any responses received in my determination of the appeal and my decision is made in the context of the relevant policies and guidance within the WCP, the LP 2021 and the Framework. I am satisfied that no parties' interests have been prejudiced by this approach.
4. The decision notice of the original planning permission Ref: 18/08655/FULL is dated 20 December 2018. In relation to appeals under section 73 of the Town and Country Planning Act 1990, if the original permission has not begun, the appeal must be made and the appeal determined before the standard time limit has elapsed, in this case three years. The application form for the variation of condition 1 and the removal of condition 13 states that at the time of its submission (5 November 2019) the development had not already started. As the appeal had not been determined by 20 December 2021, the views of the parties were sought on the status of the development to determine whether the original permission had expired or was extant.
5. The appellant replied stating that the development granted planning permission under Ref: 18/08655/FULL commenced on 19 December 2021, prior to the expiry of the consent, and that the contractor is currently continuing with the development¹. No response was received from the Council. I have no reason to question the appellant's claim. On this basis, the original permission is extant and I have determined the appeal accordingly.
6. There are discrepancies between the application form and appeal form in relation to the spelling of the appellant's surname and the postcode of the appeal site. For the avoidance of doubt, in the heading and formal decision above, I have used the surname and postcode as stated in the application form.

Background and Main Issues

7. Planning permission for Application Ref: 18/08655/FULL was granted on 20 December 2018 for Use of basement and part ground as dual alternative shop (Class A1) or restaurant (Class A3) and installation of roof level kitchen extract plant. Alterations to shopfront. Erection of extensions at rear second, third and fourth floor levels in order to enlarge existing office (Class B1).

¹ Email with letter attached dated 10 March 2022.

Installation of an internally routed extract duct terminating above roof level.
Relocation of existing plant and screening at roof level. The grant of permission included condition 1 relating to approved drawings and condition 13 relating to waste storage.

8. The appellant seeks to vary condition 1, proposing revisions to the floor plans and rear elevation to increase the internal floor area; and to remove condition 13, as the waste storage arrangements are illustrated on the revised drawings.
9. The Council's reason for refusal focuses on the effects of the proposed changes to the permitted scheme on the appearance of Nos 57-59 Beak Street (Nos 57-59) and the character and appearance of the Soho Conservation Area (the SCA). No specific reference is made in the Council's statement of case to the acceptance or otherwise of the proposed waste storage arrangements and the removal of condition 13. Nonetheless, I note the consultee comments made on this matter². These advise that there is no objection to the proposed waste storage arrangements for the B1 unit, subject to a condition requiring the continued provision of this facility. However, they confirm that the proposed waste storage arrangements for the A1/A3 unit are not in line with Council requirements and recommend a condition to address this matter. I have no reason to dispute these conclusions and I have taken the consultee comments into account in my decision and the schedule of conditions.
10. On this basis, in determining the appeal, I have focused my considerations on the proposal's effect on the appearance of Nos 57-59 and the character and appearance of the SCA.
11. In the context of the above, the main issues are: the effect of the proposed variation of condition 1 on i) the appearance of Nos 57-59 Beak Street; and ii) the character and appearance of the Soho Conservation Area.

Reasons

12. The appeal building is a late Victorian/early Edwardian, mid-terrace, four-storey with basement, brick-built property. To the front, when viewed with Nos 61-63 Beak Street (Nos 61-63), white stucco horizontal banding along with uniform tripartite casement windows across the façade above ground floor level give the building a distinctive bold aesthetic as well as a pleasing degree of symmetry. These key features, combined with the height and width of Nos 57-63 as a whole, result in the frontage of these properties having presence and prominence within the street scene.
13. In stark contrast, the land-locked rear elevation of Nos 57-59 is unadorned and much altered, causing it to be utilitarian in appearance and wholly secondary in nature to the building's frontage. The floors possess a stepped design that reduce in depth from first floor to roof level. The second, third and fourth floor levels are fully glazed with angled fenestration. Whilst this design approach is reflected to a degree by the rear elevation of Nos 61-63, it does not echo the general harmony and coherence illustrated by the front façade, which is emphasised by their separation by a party wall.
14. The building is located within the SCA. The SCA is characterised by narrow streets lined with tall terraced properties of a variety of sizes, architectural styles, materials and uses. The formal frontages of the buildings are often

² Internal Memorandum from Projects Officer (Waste), Highways Planning dated 14 November 2019.

juxtaposed by more functional elevations at the rear, sometimes featuring a mix of extensions and alterations. These elements come together to create a densely developed area, with a diverse and visually interesting townscape and vibrant atmosphere.

15. Nos 57-59 are identified in the Soho Conservation Area Audit³ as an 'unlisted building of merit'⁴. The Audit advises that, by definition, these properties are considered to be of particular value to the character and appearance of the SCA, with Victorian/Edwardian buildings making a positive contribution to the area's architectural diversity. In this respect, there is general agreement between the parties that the front elevation of Nos 57-59 makes a positive contribution to the character and appearance of the SCA and thus its significance as a designated heritage asset, with the rear elevation making a neutral contribution. From my observations on site, I agree.
16. The revised proposal would further extend the depth and rear projection of the property at second, third and fourth floor levels, beyond that already permitted and past the existing building line of the adjoining properties. It would also considerably alter the form and profile of the existing elevation at these levels. Together, these changes would increase the overall massing and bulk of Nos 57-59.
17. Nonetheless, it is noticeable from the submitted images and was confirmed on my site visit, that there is no definitive building line which is clearly legible along the rear of the terrace which would be adversely disrupted by the proposal. Furthermore, the curved form of the proposed bays at second, third and fourth floor levels along with the stepped back nature of the fourth floor level would substantially moderate the physical and visual prominence of the proposal on the building's rear elevation.
18. I acknowledge that the curved bay design of the upper levels of the revised extension would conspicuously alter the appearance of Nos 57-59's rear elevation, introducing a new aesthetic which would contrast with neighbouring properties. However, the rear elevation of the host building is of minimal architectural quality and interest, having already been compromised by previous changes. In addition, extensions and alterations to other buildings in the terrace have lessened the rear façade's homogeneity and augmented its diversity. The proposal's minimalist form and use of complementary materials would facilitate its assimilation onto the rear elevation of Nos 57-59 and the terrace, whilst also adding to the observable miscellany of architectural styles.
19. Although the proposal would remove the limited degree of balance that the rear elevation of Nos 57-59 currently has with Nos 61-63, this is not a key design feature of Nos 57-63 as a whole which is worthy of retention. Moreover, I am mindful that this relationship would be weakened to an extent via the implementation of the permitted scheme.
20. In all of the above respects, the revised proposal would not be discordant on the rear elevation of the host building and it would not harm the appearance of Nos 57-59.
21. In terms of the SCA, fundamentally, the proposal would not alter the principal façade of the appeal building which contributes in a positive way to the intrinsic

³ Soho Conservation Area Audit, adopted 2006.

⁴ Part of group 51-71 (odd) Beak Street.

character and appearance and thus the significance of the SCA. Furthermore, in finding that the proposal would not harm the appearance of Nos 57-59, the rear elevation's neutral contribution to the character and appearance of the SCA would be maintained. Consequently, the building's value as an 'unlisted building of merit' within the SCA would also be sustained.

22. In coming to my decision I am aware of the many private views of the rear elevation of Nos 57-59 from surrounding buildings. I note the importance given to views from the private domain by Inspectors in appeal decisions in determining harm to the character of a conservation area. Indeed, there would be little merit in conserving those elements which are acknowledged as being of interest which can only be seen from the public domain. However, change to heritage assets, including conservation areas, only becomes harmful if the identified special interest is eroded. In this instance, the recognised positive traits of the SCA as a whole would be preserved.
23. Drawing the above together, I conclude that the proposed variation of condition 1 would not have a harmful effect on the appearance of Nos 57-59 Beak Street; and would preserve the character and appearance of the Soho Conservation Area. In these respects it would meet the requirements of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). It would also not conflict with Policies 38 and 39 of the WCP which, amongst other things, require new development to be of a high quality and positively contribute to Westminster's townscape and streetscape; and preserve or enhance the character and appearance of Westminster's conservation areas. It would also accord with Policies D3 and HC1 of the LP 2021, in so far as they seek development to follow a design-led approach that optimises the capacity of sites and enhances local context; and conserve the significance of heritage assets.
24. As I have found no harm to the significance of the designated heritage asset of the SCA, there is no requirement for me to balance this against any public benefits of the proposal.

Other Matters

25. The Council has drawn my attention to two appeal decisions where Inspectors dismissed proposals for rear extensions to buildings within its local authority boundary⁵. From the limited information submitted, I note the similarities between the cases cited and the appeal scheme in terms of the use of the properties; the location of the extensions, which would be visible in private views; and the siting of the buildings within conservation areas.
26. However, there are also fundamental differences. In Appeal Ref: 3200650 part of the original/historic rear elevation was still discernible, which is not the case for Nos 57-59. Furthermore, the cumulative totality of that scheme appears to have been far greater than the appeal proposal before me. Additionally, the property was immediately adjacent to a listed building and, as such, within a built context which was more sensitive to change. In Appeal Ref: 3253855, the proposal comprised the infilling of a space between buildings, which is not the same as the appeal scheme before me. Moreover, this case was within the Portman Conservation Area, which possesses a more formal, planned and

⁵ Appeal Ref: APP/X5990/W/20/3253855, 103-105 Crawford Street, London W1H 2HS and Appeal Ref: APP/X5990/W/18/3200650, 55-56 Poland Street, London W1F 7NL.

uniform, built context. For these reasons, I do not consider that the cases referred to are directly comparable to the scheme before me, which limits the weight I can attach to them in my determination of the appeal. In any event, I have considered the appeal proposal on its own merits and found that it would not result in any materially harmful effects.

27. I note the Council's concerns that if this form of extension were to be repeated on other buildings nearby it would be harmful to the appearance of the terrace. Nevertheless, the absence of harm I have found in this instance is specific to Nos 57-59 and the proposed development. A generalised concern of this nature does not justify withholding planning permission in this case.
28. I have had regard to representations submitted by nearby residents concerning the proposal's effects on their living conditions in relation to outlook, light, fumes and noise and disturbance. The Council raised no concerns in these respects and, having regard to the submitted evidence and my observations on site, I have no reason to disagree. Moreover, the conditions imposed in relation to the use of the proposed A1/A3 unit would ensure that the current living conditions of nearby residents would be maintained.
29. I am aware that Grade II and Grade II* listed buildings are located within the wider surroundings of the site. Mindful of the statutory duty under section 66(1) of the Act, I have given special regard to the desirability of preserving the settings of these listed buildings. Given the location, extent and nature of the development proposed, it would not alter how these buildings are experienced or how their significance is appreciated. As such, it would have a neutral effect on the settings of these nearby listed buildings and would not lessen the contribution their settings make to their significance. I note the Council raised no issues in this respect either.

Conditions

30. In its statement of case the Council included four proposed conditions if the appeal was to be allowed, which the appellant has not commented on. Allowing the appeal would effectively grant a new planning permission. Mindful of advice within The Planning Practice Guidance (the Guidance) on this matter⁶ and given that no proof has been provided that any of the conditions imposed on the original planning permission have been discharged, I have restated all of the conditions imposed on the original permission with the exception of conditions 1 and 13. For consistency I have repeated the Council's numbering system which did not include number 15.
31. Condition 1 has been amended to include the revised plans. Additionally, having regard to the consultee comments on waste storage referred to above, condition 13 attached to the original permission has been removed and a new condition 13 imposed. The Guidance advises that in granting permission under section 73, new conditions may be imposed provided that they do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on that original permission. Also, because the original permission ensues, it is likely to be unreasonable to impose more onerous conditions on the new permission⁷.

⁶ Planning Practice Guidance, Paragraph: 040 Reference ID: 21a-040-20190723.

⁷ Planning Practice Guidance, Paragraph: 040 Reference ID: 21a-040-20190723.

32. In these regards, minor amendments have been made to the wording suggested in the consultee comments to reflect the requirements of the original condition 13 and to ensure that the new condition 13 is not more onerous. The appellant was given an opportunity to comment on the wording of the new condition 13, but no response was received. I am satisfied that the new condition 13 is in line with the Guidance.
33. I have retained the wording of the original condition 2, as the Council's proposed condition 2 would be more onerous. Conditions 20 and 19 included in the schedule attached reflect the Council's proposed conditions 3 and 4.
34. The appellant has provided written agreement to the pre-commencement conditions relating to the A1/A3 use⁸.

Conclusion

35. The proposal would not harm the appearance of Nos 57-59 or the character and appearance of the SCA and, as such, would not conflict with the development plan taken as a whole. There are no material considerations that indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be allowed. A new planning permission is granted subject to the schedule of conditions attached.

F Cullen

INSPECTOR

Schedule of Conditions

A time restriction condition is not required as the development has already commenced.

- 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.
1871 - PL113A, 1871 - PL114B, 1871 - PL115, 1871 - PL500A,
1871 - PL501A, 1871 - PL502A, 1871 - PL503A, 1871 - PL504A,
1871 - PL505A, 1871 - PL506A, 1871 - PL507A.
- 2) You must carry out any building work which can be heard at the boundary of the site only:
-between 08.00 and 18.00 Monday to Friday;
-between 08.00 and 13.00 on Saturday; and
-not at all on Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours.
- 3) You must not sell any hot-food take-away on the premises, nor operate a delivery service, even as an ancillary part of the primary restaurant (Class A3) use.

⁸ Letter attached to email dated 6 April 2022.

- 4) In the event that the restaurant Class A3 use is implemented, the provision of a bar and bar seating must not take up more than 15% of the floor area of the restaurant premises. You must use the bar to serve restaurant customers only, before, during or after their meals.
- 5) In the event that the restaurant Class A3 use is implemented, you must not allow more than 88 customers into the property at any one time (including any customers waiting at a bar).
- 6) You must not play live or recorded music on your property that will be audible externally or in the adjacent properties.
- 7) In the event that the restaurant Class A3 use is implemented, customers shall not be permitted within the restaurant premises before 07.00 or after 23.00 hours daily.
- 8) In the event that the restaurant Class A3 use is implemented, you must apply to us for approval of a management plan to show how you will prevent customers who are leaving the building, and people who wish to smoke outside, from causing nuisance for people in the area, including people who live in nearby buildings. You must not start the restaurant use until we have approved what you have sent us. You must then carry out the measures included in the management plan at all times that the restaurant is in use.
- 9) The plant/machinery hereby permitted shall not be operated except between 07:00 hours and 23:00 hours daily.
- 10) (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 LA90, 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.

- 11) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 12) You must put up the plant screen shown on the approved drawings before you use the machinery. You must then maintain it in the form shown for as long as the machinery remains in place.
- 13) (1) B1 Unit: The provision for the storage of waste and recyclable materials for the development, as shown on drawing number 1871 - PL113A, is to be made permanently available and used for no other purpose.

(2) A1/A3 Unit: A revised plan should be submitted to the City Council indicating proposals for the storage of residual waste, food waste and recyclable materials which must be approved prior to commencement of this part of the development. The provision for waste storage is to be made permanently available and used for no other purpose.
- 14) You must apply to us for approval of details of secure cycle storage for the basement and ground floor retail/restaurant use. You must not start any work on this part of the development until we have approved what you have sent us. You must then provide the cycle storage in line with the approved

details prior to occupation. You must not use the cycle storage for any other purpose.

- 16) You must hang all doors so that they do not open over or across the road or pavement.
- 17) You must apply to us for approval of a Servicing Management Plan. This must include the hours during which servicing will take place, which should be at such times that there will be no adverse impact on the amenity of residents in neighbouring buildings. You must not commence the A1 or A3 use until we have approved what you have sent us. You must then carry out the servicing of all the units according to the Servicing Management Plan.
- 18) Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that class in any statutory instrument revoking or re-enacting that order) the retail accommodation hereby approved shall not be used for food/supermarket purposes.
- 19) 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.
- 20) You must apply to us for approval of photographs of the facing materials you will use, including glazing, and elevations and roof plans annotated to show where the materials are to be located. You must not start work on the relevant part of the development until we have approved in writing what you have sent us. You must then carry out the work using the approved materials.
- 21) The extract duct hereby approved shall be installed in full prior to the commencement of the restaurant (Class A3) use hereby approved and shall be retained in situ for the life of the development.

End of Schedule of Conditions