



Appeal Decision

Site visit made on 24 January 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2023

Appeal Ref: APP/X5990/W/22/3305083

65 Bayswater Road, London W2 3PH

- 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 Capitalstart Ltd against the decision of the City of Westminster Council.
 - The application Ref 21/08196/FULL, dated 29 November 2021, was refused by notice dated 14 June 2022.
 - The development proposed is described as the change of use of the existing retail shop (Class E) plus the rear part of the ground floor flat and basement (Class C3), into a restaurant on the ground floor with kitchen and services in the basement (Use Class E); Re-model the existing 2 no. 1-bed flats on the first and second floors to create a larger 1 no. 2-bed flat combining both floors; and external alterations to install a new shopfront in the Bayswater Rd frontage and 2 new doors in the Elms Mews frontage at ground floor level.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the existing retail shop (Use Class E) plus the rear part of the ground floor flat and basement (Use Class C3), into a restaurant on the ground floor with kitchen and services in the basement (Use Class E); and external alterations to install a new shopfront in the Bayswater Road frontage and 2 new doors in the Elms Mews frontage at ground floor level, at 65 Bayswater Road, London W2 3PH in accordance with the terms of the application, Ref 21/08196/FULL, dated 29 November 2021, subject to the attached schedule of conditions.

Procedural Matters

2. Amended plans were submitted with the appeal removing any alterations to the first and second floor flats and substituting the proposed fully opening frontage of the retail shop (Class E unit) with a replacement frontage similar to that existing. These plans would remove elements from the originally proposed scheme and to my mind would not evolve the proposal. Hence, as all parties have had opportunity to comment on them, and in line with the 'Wheatcroft Principles' established under *Bernard Wheatcroft Ltd v SSE* 1982, I am content that no parties would be unfairly disadvantaged by my acceptance of these plans.
3. For clarity I have, therefore, considered the following plans: 001, 002, 003, 004, 005 B, 006 A, and 007. I have also adjusted the description of development accordingly in the above decision, removing the elements no longer proposed.

Main Issues

4. It is noted that the proposal would seek to change the current retail unit to a restaurant. Notwithstanding the internal works required both parties agree both uses would fall into Class E of the Town and Country Planning (Use Classes Order) 1987 (as amended) so planning permission would not be required for the change of use.
5. No objections have been raised in relation to the proposed 2 new doors into the Elms Mews elevation of the appeal building and a new flue on the roof. On review of the evidence I am satisfied, subject to conditions, that their form and design would maintain the character and appearance of the building as well as that of the Bayswater Conservation Area (CA).
6. Therefore, the main issues are the effect of the proposed Class E unit frontage on the character and appearance of the host building and whether it would preserve or enhance the character or appearance of the CA, and the living conditions of nearby residents regarding noise and disturbance; and whether the proposed development would affect housing stock having regard to relevant local policies.

Reasons

Character and appearance

7. The appeal building is a 3 storey, corner property with a narrow frontage onto Bayswater Road which at ground floor level provides a small Class E unit, which is currently vacant and in a poor state of repair. The return of the building faces onto Elms Mews and includes, amongst other details, the only windows to the basement and access to the upper floors.
8. It is located at the edge of the CA, opposite Kensington Gardens and abuts The Swan, a two storey public house. The appeal building is highly visible within the CA and along with The Swan creates some visual relief within a street scene otherwise dominated by taller buildings. Accordingly, it forms part of the cityscape backdrop along the northern edge of Kensington Gardens, thereby contributing to the overall significance of the CA. However, its poor state of repair and lack of active street frontage is detrimental to this part of the CA's character and appearance.
9. As the appeal site is within the CA, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of that conservation area. Paragraph 189 of the National Planning Policy Framework (the Framework) requires that heritage assets, as irreplaceable resources, 'should be conserved in a manner appropriate to their significance' and paragraph 199 confirms 'great weight' should be given to their conservation.
10. As the previously proposed open frontage has been removed from the appeal scheme and it is now proposed to replace the existing frontage with a similarly proportioned hardwood version, the visual integrity of the appeal building would be retained. Accordingly, and with an appropriately worded condition to secure details of the new frontage, the proposal would retain the character of the appeal building, and improve the overall appearance of the CA. Should the class E unit be brought back into use, it would provide an active frontage within

the street scene thus better revealing the building's relationship to its surroundings and further enhancing the character and appearance of the CA.

11. In conclusion the proposal would improve the character and appearance of the host building and enhance the character and appearance of the CA. Therefore, it would comply with Policies 7, 38, 39 and 40 of the City Plan 2019-2040 (CP) which requires all new development to protect and positively respond to the local character and historic environment, in a manner appropriate to their significance.

Living conditions

12. The Council's concerns on this issue were specifically related to the previously proposed openable frontage of the Class E unit. However, as the openable frontage no longer forms part of the proposal, I am satisfied the reuse of the unit would not cause more noise and disturbance to nearby residents than if the current frontage were retained.
13. As such the proposal would not have a detrimental impact on the living conditions of nearby residents and the proposal would comply with CP Policies 7, 33 and 38 as far as they seek to protect existing residents from unacceptable impact on their living conditions.

Housing stock

14. The proposal would convert the 2 bedroom flat at ground and basement level into additional space for the Class E unit. CP Policy 8(C) specifically protects existing residential units with only 2 exceptions. As the proposed reconfiguration would not provide support or affordable housing nor create family sized housing out of non-family sized housing, the proposal does not comply with the exceptions set out in CP Policy 8(C).
15. It is appreciated that historically the 2 bedroom flat may have originally been part of the commercial unit, nevertheless the main parties agree its current lawful use is residential.
16. The proposal would, therefore, constitute the loss of a single dwelling and so would have a detriment effect on the housing stock of the area. This would fail to comply with CP Policy 8(C).

Other Matters

17. The Council's lack of communication and delay in requesting for additional information should be raised directly with the Council. As these are administrative matters, they do not impact the planning merits of this case.

Conditions

18. In addition to the standard time limit condition (1), I have imposed a condition (2) requiring the development to be carried out in accordance with the approved plans to provide certainty.
19. The Council has suggested a further 6 conditions which I have considered against advice in the Framework and Planning Practice Guidance and amended for clarity. Given the nature of the proposed development, the integrity of the property, its location within the CA, and the limited details in the evidence before me, it is necessary to attach conditions 3 and 4 relating to materials and

detailing of specific elements. Conditions 4, 5, 6, and 7 relate to working hours, noise and vibration and are necessary to ensure that the living conditions of the nearby residents and occupants of the upper floors of the appeal building are protected. I have imposed condition 8 in the interest of highway safety.

20. The Council also proposed a condition to protect residents from existing noise, however this would not be reasonable as it would seek to remedy a pre-existing issue not related to the development hereby permitted.

Planning Balance and Conclusion

21. The proposal would constitute the loss of a singular dwelling so fail to comply with CP Policy 8(C). However, the appellant states the basement portion of the flat has been damaged by flooding. This was caused by surface water run-off from the hard surfaces of and around Elms Mews, which accumulates in the dip in the road by the basement windows. The water then enters the basement area of the flat by the windows. There is nothing before me to contradict this, and through the information submitted and my onsite observations, it is evident the flat has been severely damaged and is currently uninhabitable, thus it is not actively contributing to the area's housing stock.
22. It is appreciated the Council consider the living conditions provided by the flat as not uncommon in the area. However, the quality of accommodation the flat would provide, should it be repaired, would be compromised. This is due to the likelihood of further flood damage from surface water, and the potential harmful effects stopping up the basement windows would have, to prevent or reduce future flooding, on the living conditions of potential future occupants in terms of light, ventilation, and outlook. I therefore find the permanent loss of the existing flat from the area's housing stock would carry limited weight.
23. In comparison the Class E unit, constitutes a singular room with no storage or staff welfare facilities. This along with its small size is a limiting factor when seeking to bring the unit back into use. The proposal would provide additional floor space for the Class E unit creating a more viable and flexible space for a mix of perspective future uses including that proposed, a restaurant. The reuse of the Class E unit would positively impact on the character of the appeal building and the proposed new frontage would improve its appearance. The proposal would therefore, in turn, enhance the CA's character and appearance and, in compliance with Paragraph 199 of the Framework, I give this great weight.
24. The lack of harm to the living conditions of neighbouring occupants, would, by definition, be a neutral factor neither weighing for or against the proposal.
25. Consequently, the benefits the proposed development would provide would outweigh the harm identified. Therefore, there are material considerations, specific to the appeal site's situation and circumstances, and the Framework, which indicate a decision other than in accordance with the development plan as a whole.
26. For the reasons given above I conclude the appeal is, therefore, allowed.

RJ Redford

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001, 005 B, 006 A, and 007.
- 3) No external works relating to the development hereby permitted shall commence until details, including materials to be used, in the Class E unit frontage facing Bayswater Road, the 2 external doors facing Elms Mews, and the flue, have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the details required by condition 3, all work to the outside of the building required by the development hereby permitted, in terms of the choice of materials, method of construction and finished appearance, shall match those used in the existing building.
- 5) Construction works, except piling, excavation, and demolition, shall take place only between 8am and 6pm on Monday to Friday, between 8am and 1pm on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.

Piling, excavation, and demolition shall take place only between 8am and 6pm on Monday to Friday and shall not take place at any time on Saturdays, Sundays or on Bank or Public Holidays.
- 6) 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 0.2m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 7) The plant/machinery hereby permitted shall not be operated except between 9am and 11pm daily.
- 8) The new external doors hereby permitted should be hung so as not to open over or across the road or pavement.

END OF SCHEDULE