



Appeal Decision

Site visit made on 25 April 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 June 2023

Appeal Ref: APP/X5990/W/22/3310847

Basement And Ground Floor Maisonette, 18 Mortimer Street, City of Westminster, London W1T 3JN

- 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 Fausto Fernandes against the decision of City of Westminster Council.
- The application Ref 22/06158/FULL, dated 9 September 2022, was refused by notice dated 28 October 2022.
- The development proposed was originally described as "*The proposal is to make environmental improvements at 18 Mortimer Street. It is important to understand that the Council does grant planning permission as the heat loss reduction achieved, does meet the Council's aim of improving environmental performance, at ground floor, 18 Mortimer Street, W1T 3JN, located in a conservation area, by the installation of energy efficient double glazing in aluminium mullions from floor to ceiling to replace and upgrade the existing thermally non-compliant single glass in internal metal mullions from floor to ceiling*".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council, in their formal decision notice, describe the proposal as the '*replacement of the ground floor front windows with openable, double-glazed shopfront*'. This appears to be an accurate reflection of what is proposed and is a more accurate and concise description of the proposal removing a large amount of text from that set out in the application form not describing acts of development. I have determined the appeal accordingly.

Main Issue

3. The main issue is whether the proposed development would preserve or enhance the character or appearance of the East Marylebone Conservation Area (EMCA).

Reasons

4. The appeal property lies on Mortimer Street between its junctions with Wells Street and Nassau Street. It has a distinctive early Victorian style shop front with a multi-paned display window and cast-iron railings around a light well. Its doorway and round arched fanlight, entablature, fluted pilasters, ionic capitals and decorative console brackets also appear to be original features. The building is located within the EMCA, the historical significance of which is derived from its historical development in the 18th Century as part of the fashionable West End of London. The buildings in this part of the EMCA have

diverse architectural characteristics and uses, which leads to a vibrant, urban character. The appeal property makes a positive contribution to the EMCA as a result of its distinctive architectural style and detailing.

5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on the decision maker to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area (CA). In considering the effect of the proposal on the CA the impact must be weighed against the harm it would have on the heritage asset.
6. No.18 Mortimer Street, although not listed, is identified in the East Marylebone Conservation Area Audit Supplementary Planning Guidance 2006 (SPG) as being either Victorian or Edwardian in age and having a notable individual shopfront. The SPG notes that few shopfronts in the EMCA have retained all their original features and the best examples have retained their original glazing bars, doorways and stallrisers. Although it is stated that the ground floor is now in residential use, I have not been presented with any substantive evidence that the existing shop front is a replacement and not original.
7. Shopfronts and buildings on Mortimer Street are varied and characterful in their appearance which creates interest in the street and the locality. Where the shopfronts have been retained, their design and proportions enhance the buildings and the street as a whole. As a result, the appeal property contributes significantly to the character and appearance of the street and the EMCA.
8. The opening nature of the proposed glazing would not be in keeping with the traditional appearance of the building as a whole. Moreover, the proposed replacement glazing which would have wide aluminium mullions would not relate well to the openings at the upper floors of the building, having a flat and plain appearance compared with the more detailed bowed original. By their nature the double-glazed units would be deeper and bulkier than the existing single glazed window and would be appreciated as unsympathetic and awkward addition that would undermine the historic integrity of the shopfront. As a result, the proposal, fails to either preserve or enhance the character and appearance of the CA.
9. I have carefully considered the appellants desire to make the property more thermally efficient and easier to maintain. I am not convinced that the proposal before me is the only way of achieving these aims. Although the appellant states that the windows would only be opened for short periods of time to allow cleaning to take place, I have no way of controlling this. Furthermore, on my site visit I observed numerous other properties close by which have lightwells to the front with traditional style windows which appeared to have clean windows and were well maintained. I appreciate that there are a variety of designs of shopfronts in the area, many of which are modern in appearance, however, poor quality shop fronts are identified in the SPG as a negative feature of the EMCA. Having taken all the above into consideration, the harm to the EMCA which would arise as, a consequence of the proposal would, however, be less than substantial.
10. Paragraph 202 of the National Planning Policy Framework (the 'Framework') states that where the harm is less than substantial, this harm should be weighed against the public benefits of the proposal. The existing windows are single glazed and therefore are not thermally efficient. Their replacement with

efficient double glazing with aluminium mullions, would be both a public and private benefit. The proposal would also allow easier maintenance and cleaning of the windows and would reduce noise within the property. I consider these to be private benefits. The public benefits of the proposal would therefore be very limited. Neither the public nor private benefits of the proposal would outweigh the harm to the heritage asset that I have identified.

11. The proposal would therefore adversely affect the character and appearance of the host building and consequently would not preserve or enhance the character and appearance of the CA. The proposal, whilst it would meet some of the policy objectives set out, would fail to secure the high standard of development sought by Policies 38, 39 and 40 of Westminster's City Plan 2019-2040 (2021) (WCP) in contributing positively to the character and appearance of the area, adjacent buildings and heritage assets. The proposal would also conflict with policy PR1 of the Fitzrovia West Neighbourhood Plan 2020-2040 (FWNP) which requires that development makes a positive contribution to the public realm.
12. The Council has cited policy B2 of the FWNP which relates to retail, commercial, business, hospitality and other services uses. As the property is in use as a residential dwelling I consider that this policy is not applicable in this instance. Nevertheless, the lack of conflict with this policy does not outweigh the conflict that I have found with other policies in the FWNP and the WCP which would lead me to an alternative conclusion.

Other Matters

13. My attention has been drawn to a previous planning permission which was granted for a replacement entrance door and shopfront at the appeal property in 1995¹. I have not been provided with the precise details of this permission. The permission was granted almost twenty years ago and was not implemented; therefore, I do not consider that it represents either a fallback position or a precedent which can be relied upon. Moreover, the permission predated the current development plan and the Framework and therefore I afford it little weight and does not lead me to an alternative conclusion on the main issue.
14. Reference has been made to a scheme for a replacement shopfront elsewhere on Mortimer Street. I note that this scheme also pre-dates the current development plan and the Framework. Furthermore, I do not have the full details of the circumstances which led to that proposal being accepted and cannot be sure that it represents a direct parallel to the appeal proposal. The existence of a replacement shopfront elsewhere should not justify a further erosion of the character of the street scene which would arise from this proposal.
15. I have also had my attention drawn to a recently refused application² for an alternative scheme for the frontage of the property. Whilst I appreciate the appellant's desire to alter the property and make it easier to maintain, my considerations are based solely on the scheme on the scheme before me and not as comparison with any other scheme. I have determined the appeal on the basis of the information before me and for the reasons set out above.

¹ LPA reference 95/03377/FULL

² LPA reference 21/02787/FULL

16. I note the dissatisfaction of the appellant over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal before me.
17. Taking all these factors into account, I therefore find that the public benefits arising from the proposed works would not outweigh the harm to the significance of the designated heritage assets I have identified. For these reasons the proposed works would fail to satisfy the requirements of the Act and paragraph 197 of the Framework.

Conclusion

18. For the reasons given above, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

K L Robbie

INSPECTOR