
Appeal Decision

Site visit made on 21 January 2025

by A Veevers BA(Hons) PGDip(BCon) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal Ref: APP/X5990/W/24/3351308

Flat B, 12 Rex Place, City of Westminster, London W1K 2HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Rashid Al Mannai against City of Westminster Council.
 - The application Ref is 23/08654/FULL.
 - The development proposed is reinstatement of pavement and installation of pavement lights.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for a full award of costs was made by Mr Rashid Al Mannai against the City of Westminster Council and that is the subject of a separate decision.

Preliminary Matters

3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a delegated report and statement for the purposes of this appeal highlighting that it would have refused planning permission. I have had regard to this information in framing the main issue.
4. The National Planning Policy Framework (the Framework) has been updated since the appeal was made. However, as the revisions do not affect the matters under consideration in this appeal, (other than paragraph references) it was not considered necessary to seek further comment from the parties.

Main Issue

5. On the basis of the appeal documentation and my own observations, I consider the main issue to be whether the proposed development would accord with the local development plan strategy, with particular regard to the effects of the operations involved in and associated with basement excavation under the highway.

Reasons

6. The appeal property, Flat B, 12 Rex Place (no 12) is a ground and basement flat within a terraced row. At my site visit I saw the existing pavement along this side of Rex Place ends at the boundary between no 12 and 16 Rex Place. There is no pavement directly fronting no 12 because this land previously provided vehicular

access to garaging (which has now been converted to residential accommodation and includes the main entrance door to no 12).

7. Planning permission has been granted for the extension of the pavement fronting the property and the provision of one section of pavement lights (glass blocks) within the pavement, which would provide natural light to the basement bathroom of Flat B¹ (the 2023 permission). I have been provided with the decision notice and plans for the 2023 permission. At the time of my site visit, the 2023 permission had not been implemented but remains extant. The proposal before me is also to extend the pavement but to install an additional, second section of pavement lights in order to provide natural light to the basement utility room of Flat B.
8. Policy 45 of the City of Westminster City Plan 2019-2040 (Adopted April 2021) (the CP) lists several criteria which basement developments in the City of Westminster are required to meet. In terms of the extent and depth of basements, criterion B.5 requires that basement development does not encroach more than 1.8m under any part of the adjacent highway and retains a minimum vertical depth of 900mm between the highway surface and vault structure. The supporting text to this policy indicates that vaults can restrict the space available for services in the highway, and access to them, and therefore adequate space must be available between the highway and any excavation proposed under it.
9. The appeal plans indicate that the proposed pavement would be located above the existing basement vaults at no 12. The Council do not allege harm in relation to the proposed pavement. As this element of the proposal has already been approved by the 2023 permission and from my own observations, I agree that the proposed pavement would be acceptable.
10. In terms of the additional pavement lights, the Council has drawn my attention to their Supplementary Planning Document 'Westminster Way, Public Realm Strategy, Design Principles and Strategy', adopted September 2011 (SPD). At page 112 of the SPD it states that in the Georgian and Victorian eras, basements were excavated and vaults for coal storage made under the footway (with coal hole covers) and the spoil from the excavations made up the level of the highway.
11. However, in this case, and from what I saw on the ground, it is not clear what lies beneath the highway in the location of the proposed pavement lights. While a section plan² has been provided, it is not clear where the section is taken from. No assessment of current conditions or what, if any, infrastructure lies beneath the highway in the location of the proposed pavement lights has been provided.
12. I find there is no other compelling information before me to demonstrate that either a vertical depth of 900mm between the vaulted basement and the proposed pavement lights would be maintained, or that a coal hole exists of a size that would accommodate the proposed lights without impact on essential underground services.
13. In the absence of substantive evidence before me to demonstrate compliance with the requirements set out in Policy 45 of the CP, or the SPD, I cannot be certain the proposal would not have an adverse effect on the ability of the highway to

¹ LPA Ref: 23/07216/FULL

² Drawing No 12BRP/03B

accommodate necessary services. I note that the Council's highway team have objected on this basis.

14. For the above reasons, the proposed development would not accord with the local development plan strategy, with particular reference to the effects of the operations involved in and associated with basement excavation under the highway. It would therefore conflict with criterion B.5 of Policy 45 of the CP. This policy seeks to ensure that basement developments are appropriately designed to retain a minimum vertical depth below the footway or carriageway in order to protect and maintain access to essential services in the highway.

Other Matters

15. The appeal site is located within the Mayfair Conservation Area (CA). Whilst the effect of the proposal upon the CA does not form a basis on which the Council alleges harm, I nonetheless have a statutory duty as set out in Section 72(1) of the Planning (Listed Buildings and Conservations Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
16. From the evidence and my own observations, the CA as a whole includes mixed commercial and residential development. The significance of the CA, insofar as it relates to this appeal is primarily associated with the age and period architectural integrity of buildings in the area that remain substantially intact and make a positive contribution to the character and appearance of the CA as a whole.
17. The proposal would not be at odds with other similar pavement or lightwell development in the area and due to its limited scale would not be a discordant or incongruous feature in the street or the CA. As such, I consider that the character and appearance of the CA would be preserved.
18. Although the 2023 permission would include a section of pavement lights fronting no 12, and I saw other pavement lights along Rex Place, it does not automatically mean that the additional pavement lights proposed in this appeal would be acceptable. The circumstances in each proposal are likely to be different, and in any event the fact that apparently similar development has been granted permission is not a reason, on its own, to allow unacceptable development. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Conclusion

19. The proposed development conflicts with the development plan when considered as a whole and there are no other considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
20. For the reasons given above I conclude that the appeal should be dismissed.

A Veervers

INSPECTOR