

Appeal Decision

Site visit made on 3 October 2016

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25th October 2016

Appeal Ref: APP/X5990/W/16/3154409

28 D'Arblay Street, London, W1F 8EW

- 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 Colin Sloley or Bento Chaya t/a Tombo against the decision of City of Westminster Council.
 - The application Ref 16/04521/TCH, dated 14 May 2016, was refused by notice dated 29 June 2016.
 - The development proposed is described as one table and two chairs and an A frame outside our A1 premises.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council altered the description of development to "Use of the public highway for the placement of one table and two chairs in an area measuring 0.6m x 4m outside the existing ground floor premises". As this more accurately describes the development, and doesn't include reference to the advertisement which cannot be dealt with under S78 of the Act, I have determined the appeal on the basis of this description.

Main Issue

3. The main issue is the effect of the proposal on pedestrian safety and street cleanliness.

Reasons

4. D'Arblay Street sits with an area of mixed use in Soho, with a high concentration of pubs, restaurants and coffee shops in the immediate area. The appeal property is currently used as a salad and tea bar. The appeal relates to the use of an area immediately in front of the property as a small outdoor seating area with a table and 2 chairs. At the time of my visit a small metal table and 2 folding chairs were in place outside the property. I also noted that in addition to the appeal property, a number of other premises on the street had tables and chairs or benches outside the properties.
 5. I visited the site mid-afternoon on a weekday. At that time the area was generally busy with pedestrian and vehicular traffic. Taking into account the vibrant character of the area, and the position of the property, close to Berwick Street, I consider that this is likely to be typical, with relatively high pedestrian
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flows maintained outside the property throughout the day and evening and relatively busy traffic with some potential for conflict with a risk to pedestrian safety. In this regard, the Council refer to a number of development plan policies which seek to ensure that pedestrian movements are given priority on public footways. More detailed guidance is also provided in *The Westminster Way - Public Realm Strategy Design Principles and Practice Supplementary Planning Document* (the SPD). This reflects guidance in *Manual for Streets* (MfS) and indicates that a clear width of least two metres of footway is desirable, as this would be sufficient to enable a pushchair and a wheelchair to pass together. MfS also advises that a width of around 1.5 metres is advisable to allow 2 pedestrians to pass.

6. The area in question comprises an area of around 66 cm in depth in front of the shop façade. It is partly surfaced with glazed bricks to the basement below and includes the recessed area between the pilasters of the shop front. The submitted plans show the pavement extending to around 1.4 metres in depth beyond the proposed seating area. Measurements provided by the Council show that in practice this is closer to 1.34 metres. Moreover, when in use the proposed seating is likely to occupy a larger area than that shown on the submitted plans, with customers and their belongings spreading outside the very narrow area indicated. Therefore, in practice, if the table was occupied, it is likely that the width of pavement in front of the appeal premises available to pedestrians would be reduced to such an extent that 2 pedestrians could not conveniently pass each other. I noted on site that double yellow lines ran in front of the appeal premises, with vehicles parked on the opposite side and cars passing alongside close to the pavement. In this regard, restrictions to the width of the usable pavement in this location are likely to risk pedestrians stepping out onto the road and into on-coming traffic.
7. Furthermore, the Council have also expressed concerns that the proposal will make it more difficult to clean the street, as the street cleaning contractors require a minimum width of 1.8 metres to operate effectively. During my site visit I noted that the street cleaner was unable to access the pavement and was passing directly up the road, in the path of on-coming traffic. In this regard, I see no reason to doubt the Council's view that obstructions to the pavement would limit the effectiveness of street cleaning.
8. I take into account that a number of other premises in the immediate vicinity appear to have seating on the pavement in front of their businesses. Whilst on the basis of the evidence before me I cannot be assured that none of these has planning permission, I note that many are subject to active enforcement investigations. In any case, having regard to the likely harm that would arise to pedestrian safety as a result of this proposal, I do not consider that the presence of other similar proposals in the area mitigates the harm that would arise in this case.
9. For the reasons given above, I conclude that the proposal would be harmful to pedestrian safety and would fail to provide a convenient, safe and attractive pedestrian environment, contrary to the provisions of policy S41 of the *City of Westminster Core Strategy Local Development Framework*, policies TRANS3 and TACE11 of the *Unitary Development Plan* and the provisions of the SPD which all seek to safeguard the interests of pedestrians. The proposal would also be contrary to the aims of the *National Planning Policy Framework* which seeks to give priority to pedestrian movements.

10. Consequently, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Anne Jordan

INSPECTOR