
Appeal Decision

Site visit made on 11 April 2017

by J J Evans BA (Hons) MA MRTPI

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

Decision date: 09 May 2017

Appeal Ref: APP/K5600/W/16/3165993
232-236 Brompton Road, London SW3 2BB

- 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 Ahmed Ridha of L'Opera against the decision of the Council of the Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/06294, dated 21 September 2016, was refused by notice dated 22 November 2016.
 - The development proposed is the change of use of the pavement adjacent to the premises for the placement of four tables, eight chairs and two planters.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Ahmed Ridha of L'Opera against the Council of the Royal Borough of Kensington & Chelsea. This application is the subject of a separate decision.

Procedural Matters

3. 232-236 Brompton Road is a grade II listed building within the Thurloe/Smith's Charity Conservation Area. As required by Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and of preserving or enhancing the character or appearance of a conservation area.
4. In addition to the change of use and provision of tables and chairs the proposal also seeks the provision of two planters. It was apparent from my visit that planters were already in place, although I note the appellant has provided evidence from the Council's enforcement section that similar planters were part of a 2010 planning permission. Notwithstanding this, I have determined the appeal on the basis of the submitted drawings.

Main Issue

5. The main issue is the effect of the change of use of the pavement and the provision of tables, chairs and planters on the passage of pedestrians on the footway.
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Reasons

6. 232-236 Brompton Road is part of Empire House. This grade II listed building is a prominent feature within the area, occupying the corner formed by the junction of Brompton Road with Thurloe Place. Its size and position, along with its opulent architectural detailing and ornamentation is part of its special interest. The size and appearance of the building, along with the mix of retail, service and residential uses that occur within it, makes a positive contribution towards the varied and historic character and appearance of the conservation area.
7. The appeal property is a restaurant that occupies part of the ground floor and basement of the listed building. L'Opera has a glazed frontage onto Brompton Road formed from folding doors that open into the restaurant, with an entrance to the northern corner of the seating area. Both L'Opera and the neighbouring gym have planters that project into the footway.
8. Policies CT 1, CR 3 and CR 4 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan (2015) (LP) seek amongst other things, that development does not reduce access to or the attractiveness of using existing footways, with the provision of tables and chairs maintaining the free, safe and secure passage of pedestrians. The Council's Transport and Streets Supplementary Planning Document (2016) (SPD) provides guidance for the provision of tables and chairs on the highway, requiring a minimum clear footway width of 3m on medium use footways, such as Brompton Road.
9. The appellant's drawings show the western footway of Brompton Road varying in width between 4.8m to 5.3m, with the Council stating that at its narrowest it is 4.7m wide. Within the footway directly in front of L'Opera is a lamp post, telephone box and tree. A short distance away is another lamp post and telephone box, as well as a post box, traffic signage and cycle parking racks.
10. The projection of the existing planters of both the appeal property and the neighbouring unit deflect pedestrians away from the frontage of the building. There is a strip of footway between the various items of street furniture and the kerb, but it varies in width and using it would necessitate frequently deviating around the street furniture. During my visit it was apparent that the desire line of most pedestrians is to walk centrally within the footway maintaining a direct and unobstructed course between the street furniture and the frontage of the buildings.
11. The proposed four tables would not project beyond the existing planters and due to their positioning would provide the SPD's 3m footway clearance. However, the door of the telephone box door opens into the centre of the footway and whilst I accept its use would be irregular, nevertheless when the door was opened it would reduce the unobstructed area of footway to less than the required 3m clearance. Pedestrians would have to deflect towards the frontage of L'Opera and would then have to avoid any tables and chairs positioned within the site area. Moreover, opening the box's door would be a sudden and abrupt action. Whilst the appellant considers the primary function of the footway would be maintained by the position of the table and chairs, the footway would be substantially narrowed when the telephone box was in use, and there would not be the free and safe passageway required by the LP policies referred to above.

12. The appellant would accept a condition for the positioning of the four tables and eight chairs, pointing out that the Council have imposed this elsewhere. In this instance the tables have been depicted as being very close to each other, to the planters and to the entrance to the restaurant in order to achieve the 3m clearway. Some of the chairs would be difficult to access, and in such circumstances even with the provision of heavy tables and staff monitoring, I share the concerns of the Council that patrons would be tempted to move the furniture to give themselves more convenient and spacious seating.
13. My attention has been drawn by the appellant to the planning history of nearby cafes and restaurants with outdoor seating. The tables and chairs outside these premises contribute towards the vibrancy of the area, and I note that external seating has previously been placed outside the appeal premises. However, this seating does not appear to have had planning permission, and although the previous occupier of the unit had a licence under Section 115e of the Highways Act 1980, it has expired. Nor would an extant Section 115e licence pre-determine a planning decision.
14. Furthermore, the appeal property is some distance away from the short row of the cafes and restaurants along Brompton Road that have outdoor seating. Whilst I have had regard to those referred to and the appeal decision for 241 Brompton Road, I do not have the full planning histories of these properties, and from the evidence before me the circumstances of these cases are different and not therefore directly comparable.
15. The provision of outdoor seating would make a modest contribution towards the vitality of the area, as well as add to the variety of seating offered by the restaurant. Whether the appellant is at a commercial disadvantage without outdoor covers has not been demonstrated in any detail. Having regard to the size of the existing restaurant, the provision of four tables and eight seats is unlikely to have a significant bearing on the viability of the restaurant.
16. Thus for the reasons given the change of use of the pavement for the placement of four tables, eight chairs and two planters would not maintain the free, safe and secure passage of pedestrians upon the footway. This would be contrary to the requirements of the LP Policies referred to above nor accord with the National Planning Policy Framework and its requirement for safe and secure layouts that minimise conflict and avoids street clutter.

Other Matters

17. The seating would be outside an existing restaurant that is part of the ground floor of a listed building within a conservation area. The planters, tables and chairs would not significantly detract from the setting of the listed building or its special interest. The prominence and architectural splendour of the building would be maintained, and the external covers would be seen as an extension of the restaurant use that would contribute to the vibrant diversity of the conservation area. As such the proposal would not unacceptably harm a listed building or its setting, and would preserve the character and appearance of a conservation area.
18. Local residents have raised a number of matters, including the popularity of the restaurant, the anti-social behaviour of its patrons, traffic congestion and on-street parking. Many of these concerns are not directly connected with the

planning considerations of the proposal before me, and following my findings on the main issue, I have no need to consider them further.

19. Finally, the concerns of the appellant with regard to the Council's handling of the application, including site visit arrangements, the differing advice received from various departments, and the absence of negotiation, are procedural matters. Such concerns fall to be pursued by other means separate from the appeal process and are not for me to consider.

Conclusion

20. Although the change of use and provision of chairs and tables would not harm the special interest of a listed building, its setting, or the character and appearance of a conservation area, the proposal would not maintain the free, safe and secure passage of pedestrians upon the footway. Thus for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR