
Appeal Decision

Site visit made on 2 May 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 01st June 2017

Appeal Ref: APP/X5990/W/17/3168328
43 Whitehall, London SW1A 2BX

- 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 Caffè Concerto against the decision of City of Westminster Council.
 - The application Ref 16/10439/TCH, dated 31 October 2016, was refused by notice dated 11 January 2017.
 - The development proposed is the use of public highway for the placement of five tables and eight chairs in association with adjacent business at 43 Whitehall, London, SW1A 2BX.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Caffè Concerto against City of Westminster Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the development on highway safety.

Reasons

4. The appeal site is located on a busy road. The pavement between the appeal property and the road is approximately 4.6m wide. The proposed table and chairs would accommodate approximately 1.15m of this space for a stretch of approximately 6.4m along the front of the property.
5. The Council's Westminster Way – Public Realm Strategy Supplementary Planning Document (Public Realm SPD) states that there should be a minimum clear way of 2m for pedestrians. Furthermore, it identifies that the free-flowing of pedestrians is an important duty in managing the highway network. The Council's Guidelines for the placing of Tables and Chairs on the Highway Supplementary Planning Document (Tables and Chairs SPD) goes on to state that where footways are very crowded the clear way should be much wider and on some streets that are so busy or narrow they are unsuitable for tables and chairs altogether.
6. At the time of my site visit, which took place at approximately midday on a weekday, there were a significant number of pedestrians using this stretch of the footway. The bus shelter and bus stop located a short distance from the

site were also busy, resulting in the free flow of pedestrians already being impeded to some extent. The bus stop cage extends in front of the appeal property and, given the frequency of the bus service, it is likely that the full extent of this cage could be used at the same time by multiple buses. This would result in bus users boarding and alighting from the full extent of the cage, not just at the bus shelter.

7. Whilst the proposal would retain a clear way in excess of 2m, given that it is a very crowded footway and that there are two bus stops in proximity to the site, in particular the bus shelter, the table and chairs would create a chicane effect that would result in a significant impediment to the free flow of pedestrians. During particularly busy periods, this could result in pedestrians having to step out onto the road, which would represent a severe risk to highway safety. Overall, it would undermine the primary highway function of moving pedestrians from one location to another.
8. I have been referred to the Pedestrian Comfort Guidance for London (PCGL 2010, produced by Transport for London. Although there is no evidence before me indicating what the passing footfall is for this stretch of Whitehall, the Council refer to the thoroughfare as having 'high pedestrian flows'. Appendix B of the PCGL states that 'high flow' areas have a minimum of 1,200 pph. Whilst there is no evidence of a pedestrian survey, in the absence of any evidence to the contrary, and from the observations I made during my site visit, I consider that the 'high flow' category is the appropriate assessment in respect of Appendix B. I acknowledge that the proposal would only fall 250mm short of the recommended width of 3.3m with no furniture. Nevertheless, given how busy the footway and the adjacent road are, even such a small shortfall represents an unacceptable risk to pedestrian safety. Furthermore, this does not address the nearby furniture and chicane effect that would impede the free flow of pedestrians.
9. I have had regard to the recently approved tables and chairs outside No 53 Whitehall¹. However, whilst the bus shelter is in proximity, the bus cage is not. Therefore, it is unlikely that bus users would board or alight in front of this property, unlike the appeal property. I note that there are pedestrian crossings within proximity of No 53. However, I do not consider that the relationship between these and the tables and chairs affect the free flow of pedestrians in the same manner as the bus stops and the proposal would. At a pedestrian crossing, all pedestrians would likely be waiting to cross the road. It is unlikely that anyone would be passing the pedestrians waiting at the crossing. Therefore, I do not consider that the circumstances between the appeal property and No 53 are so similar as to consider that the Council have in any way inconsistently assessed the two schemes. In reaching this conclusion, I have had regard to *North Wiltshire v Secretary of State for the Environment*[1993] 65 P&CR 137.
10. I also note that planning permission has been refused in the past for similar developments at McDonalds² and The Old Shades public house³. Whilst the proposal would retain a larger width of clear way than these two previous schemes, I do not consider that it would retain a sufficient clear way to ensure that it would not result in an unacceptable risk to pedestrian safety.

¹ LPA Ref 16/08345/TCH

² LPA Ref 01/06545/TCH

³ LPA Ref 03/09799/TCH

11. I find therefore that the proposal would represent a severe risk to highway safety. As such, it would be contrary to Policy S41 of Westminster's City Plan, which, amongst other matters, seeks to ensure that development prioritises pedestrian movement and creates a safe pedestrian environment. It would also fail to comply with Saved Policies TRANS3 and TACE11 of the City of Westminster Unitary Development Plan, which seek to ensure that development secures an improved environment for pedestrians and tables and chairs on the footway do not endanger pedestrians. Furthermore, it would fail to accord with the guidance set out in the Public Realm SPD, Tables and Chairs SPD and the PCGL.

Other Matters

12. The appeal site lies within the Trafalgar Square Conservation Area (CA) and the appeal property is a grade II listed building. The Council have raised no objection to the proposal in respect of whether it preserves or enhances the character or appearance of the area or its effect on the setting of the listed building. I find no reason to conclude otherwise. I find that it would have a neutral effect on the significance of the CA and therefore would preserve its character and appearance and would not harm the setting of the listed building. However, this does not outweigh the harm I have identified above.
13. I have had regard to the imposition of a condition that would allow the temporary positioning of the tables and chairs. However, given the risk to pedestrian safety, I am not satisfied that such a condition would be appropriate.

Conclusion

14. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR