



Appeal Decision

Site visit made on 14 August 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 17 August 2017

Appeal A Ref: APP/K5600/C/17/3170135

Land at 7-9 Bute Street, London, SW7 3EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ceru Restaurants against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
 - The enforcement notice was issued on 24 January 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a new shopfront and associated fixed seating.
 - The requirements of the notice are: (i) Remove the windows and associated rendered stall riser and surrounds (*Edged and hatched red on the Drawing attached to the notice*); (ii) Remove the fixed bench seating from frontage; (iii) Remove all resulting debris from the land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Act.
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Appeal B Ref: APP/K5600/Z/17/3170230

7-9 Bute Street, South Kensington SW7 3EY

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Ceru Restaurants against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/16/07543, dated 7 November 2016, was refused by notice dated 9 January 2017.
 - The development proposed is new shopfront to existing restaurant.
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Both appeals: Decision

1. Both appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Preliminary matters

2. Section 6 of the enforcement notice says that it: "*...takes effect not less than 28 clear days after date of issue, unless an appeal is made against it beforehand*". Plainly in this case an appeal has suspended any effective date that might have been specified, which would now run from the date of decision. Nevertheless in my experience it is highly unusual to find that an actual date that the notice takes effect has not been identified on the face of the notice.
3. Section 172(3)(b) says that service of the notice shall take place not less than 28 days before the date specified in it as the date on which it is to take effect. Whilst it is possible to calculate when the effective date would have been if no appeal had been lodged, there must be some doubt as to whether service was

affected on the date of issue. The date of issue and date of service are not necessarily the same date. Typically an effective date is specified 6-8 weeks after the date of issue to ensure that if, by way of example, a recipient refuses to sign for registered post that the notice can be re-served by hand. This would avoid the Council having to withdraw and re-issue the notice, which would have been necessary if that had happened here. The Council might therefore wish to review its approach to this matter, having regard to the example notice in the Planning Practice Guidance [the Guidance], which identifies the need for a "specific date"¹. However in this particular case, since the argument is not made and an appeal was lodged in time, there is no basis to take the point any further. No claim is made that the absence of a specific date on the face of the notice renders it a nullity and there is no clear basis to make such a finding.

4. There are differences in the description of development between the application form, the decision notice and appeal form in Appeal B. In the circumstances I propose to adopt the description from the original planning application form. Although page 3 of the Council's statement says: "...the bench seating did not form part of the planning application", I note that the reason for refusal expressly refers to the: "full width bench seat". Nevertheless drawing No 16:2058:L(2-) 101 Revision C² does not show the external seating and section 2 of the Appellant's statement confirms this was the basis on which the application was submitted. I propose to deal with Appeal B on that basis.

Appeal A, Ground (a) and Appeal B: Planning merits of the development

Main issue

5. The main issue that is common to both appeals is the effect of the development on the character and appearance of the area.

Reasons

6. The Development Plan [DP] includes *The RBKC Consolidated Local Plan 2015* [LP], which was adopted in July 2015. Amongst other things LP Policy CL10 requires shopfronts to relate well to the buildings to either side. The Appellant has submitted a number of photographs of the existing shopfronts along Bute Street. None of them show anything comparable to what has been installed, which includes sash windows with a sill height of around 1 m high. This form of shopfront contrasts sharply with the extensive glazed openings evident along both sides of the remainder of the street and in the submitted photographs.
7. I acknowledge that there is some variety in the form of shopfronts, but many of the shops incorporate stall risers to a standard modest height, which might suggest that this is the original form of frontage in the street³. Even one of the premises to which the Appellant draws attention, the Tanning Shop, has a stall riser of a similar height, albeit with images on the window that partly obscures views into and out of the shop. However neither this nor the circular feature at No 23 alters my view that the street is characterised by glazed frontages.
8. On a commercial frontage such as Bute Street I cannot accept that the form of shopfront that is proposed would be acceptable. Contrary to LP Policy CL1 it would not respect the existing context, character and appearance of the site.

¹ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548727/17b-061-20140120_example-enforcement-notice-operational-development.pdf

² An earlier version of that drawing does show "proposed external seating/tables", but that is not the drawing number specified on the Council's notice of decision.

³ See for example Royal Trinity Hospice and Octavia Foundation.

Noting the photograph of the pre-existing shopfront, there appears to have been a material reduction in glazing along the frontage of the appeal site⁴. This cannot be said to improve the quality and character of the building and the area and the way it functions, as required by LP Policy CL1.

9. LP Policy CL2 requires development to respond well to its context but for reasons already given this form of development, with domestic scale windows, would represent a poor response to the prevailing street scene at ground level. Even when looking at Nos 7-9 in isolation, the openings do not line up with the existing windows at first and second floor levels. To this extent the overall composition is not pleasing or appropriate even in its own terms, regardless of its context. LP Policy CL2 also requires development to be, amongst other things, adaptable to changes of use. However relatively small sash windows are unlikely to be well suited to any retail use that might be proposed in future.
10. Turning to the bench seating which, for reasons already given is only at issue in Appeal A, this too would be unprecedented in this street. Whilst I noted a number of premises with varying numbers of small, moveable tables and chairs during my site inspection⁵, none of these appear to be fixed onto the frontage. In contrast the bench seating does appear to be affixed to the front of Nos 7-9 since whilst it was not being used at the time of my inspection⁶ it was evident.
11. The Council originally appears to have noted the bench seating during its site inspection pursuant to the application now subject of Appeal B. On the balance of probability this suggests that the bench seating has been in place for at least 8 months, which is a sufficient period to have planning consequences. Among other things I note that no appeal has been brought under ground (c) that the "*fixed seating*" is not development. There is no reason to doubt the Council's claim that the bench seat is bolted at a number of places to the front elevation of the property. So whilst I have noted the claims that the bench is only fixed in a "*temporary manner*" and that it is "*moved inside when the restaurant is not in use*", I attach limited weight to these assertions in the absence of evidence to support them. In practice I consider the bench seating is likely to be a permanent feature of the shopfront by virtue of it being in place at all times of the day. I am unconvinced that the bench seats would be removed or that a planning condition could reasonably achieve this outcome each evening⁷.
12. The Delegated Report on the first planning application⁸, not subject of Appeal B, compares the bench seat along the front façade to "*an open bar*" and I find it hard to disagree with that description. It is a harmful feature that increases the disparity between the appeal premises and its environs. It would fail, at a minimum, to respect its context or relate well to nearby buildings, contrary to LP Policies CL1, CL2 and CL10. Although there is a precedent for outside tables and chairs along the street this would not justify this form of bench seating.
13. On the main issue I conclude that the development harms the character and appearance of the area, in conflict with LP Policies CL1, CL2 and CL10.

⁴ This is confirmed by the Appellant's own figures, as set out in the final comments.

⁵ Including, but not necessarily limited to, Rotisserie, Oddonos, Shikara, Oblique, Trevi and La Grande Bouchee.

⁶ At approximately 1500 hours on a sunny August afternoon when there were a number of other premises with outside seating, which was in use.

⁷ The answer to question 20 of the planning application form indicates that the restaurant is open 7 days a week from 0800-2400 hours from Monday to Friday and only marginally fewer hours at the weekends. It follows that even if I am wrong and an enforceable condition could be imposed, the bench would only be removed overnight and would therefore be a permanent feature of the street scene during almost all daylight hours.

⁸ No PP/16/05447, which did include the outside seating.

Other considerations

14. Against a finding of a clear conflict with the DP as a whole, I turn to consider whether any material considerations have been advanced that indicate that the determination should be made otherwise than in accordance with the DP. The first factor is that the pre-existing shopfront comprised heavy and unwieldy bi-fold doors that were unusable and dysfunctional, and not inclusive. However the Council's photograph appears to show a modern, attractive frontage incorporating a large amount of glazing. Even if that impression might be wrong, I cannot accept the claim that the pre-existing shopfront was contrary to policy. There is no evidence to show that the arrangement did not comply with disabled access requirements and, as the Council observes, the new scheme appears to have resulted in a lesser amount of level access to the restaurant. For these reasons I attach very limited weight to this factor.
15. Allied to the above point, in the absence of evidence that the two blocks of two pairs⁹ of bi-fold doors did not operate, I attach very limited weight to the claim that there was no activity between the street and the restaurant. It has not been shown that the bi-fold doors were not capable of being made to operate by undertaking minor modifications. In any event the large amount of glazing evident would have ensured a visual relationship between the street and the restaurant, which has been lost as a result of the restricted size of the new windows. The Council says that there is now a barrier to activity; I agree.
16. The Appellant says the premises have a compact floor plan and it is imperative to establish as many covers as possible, which a stall riser facilitates because it allows functional space to be utilised against the frontage. However the fact is that the proposed ground floor plan¹⁰ appears to show only the "waiter's table" and the area adjoining the façade otherwise just used for circulation. Whilst there is a table shown at one end, away from the door, I consider this would be no different regardless of whether the frontage comprised windows or full height doors. Accordingly the proposed layout does not support the claim. It is unclear why the waiter's table could not have been placed in this position, adjacent to the brick column between the bi-fold doors, in the original layout. In the circumstances I also attach this consideration very little weight.
17. I acknowledge the existence of the pre-existing planters but, given that they have now been removed, these appear to have been moveable. The planters were presumably in this position because of a conscious choice made by the operator as it would appear they would have provided a boundary in the event that the bi-fold doors were pulled back. In the circumstances I am unconvinced that the planters would have reduced the amount of active frontage or that they were completely out of context, as has been claimed. Their removal is not a positive factor to which I attach any significant weight, particularly as there was no requirement that they should be stationed in that position in any event.
18. The Delegated Report on the application now subject of Appeal B says that the development would preserve the character and appearance of the Thurloe/Smith's Charity Conservation Area and I find no reason to disagree. At final comments stage the Appellant asserts that the bench seating would make a positive contribution to the Conservation Area. However given my findings as to its impact on the street scene it must follow that I disagree. It would not

⁹ This appears to be what is shown on drawing No 16:2058:L(2-)002 Revision B, although it might be two blocks of four bi-fold doors.

¹⁰ Drawing No 16:2058:L(2-)101 Revision C.

represent the highest architectural and urban design quality, and it appears that the only reason the Council does not allege harm to views into and out of the Conservation Area is by virtue of the lack of proximity between the two.

19. I acknowledge that there appear to have been no objections to the planning application now subject of Appeal B or at appeal stage, but there does appear to have been an objection to the first planning application. As such I am only able to attach very limited weight to this consideration. I also appreciate that a Planning Officer indicated in an email dated 7 November 2016 that "*the shopfront would be acceptable*". However that informal advice is plainly at odds with the formal decision of the Council to refuse the subsequent planning application, such that I am only able to attach it very limited weight.

Appeal A, Ground (a) and Appeal B: Overall conclusion

20. I have taken account of all other matters raised in the Appellant's submissions, but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP. For the above reasons, having regard to all other matters raised, I conclude that the ground (a) appeal in Appeal A, and Appeal B, should both fail.

Conclusion

21. For the reasons given, and having regard to all other matters raised, I conclude that the appeals should be dismissed and I shall uphold the enforcement notice in Appeal A. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew

INSPECTOR