



Appeal Decision

Site visit made on 15 January 2018

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st January 2018

Appeal Ref: APP/K5600/W/17/3183467

183 Kensington High Street, London W8 6SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Five Guys JV Limited against the decision of The Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref CON/17/02543, dated 13 April 2017, sought approval of details pursuant to condition No 8 of planning permission Ref PP/16/08021, granted on 6 February 2017.
 - The application was refused by notice dated 19 July 2017.
 - The development proposed is installation of shopfront and use of an area of highway for tables and chairs.
 - The details for which approval is sought are: inclusive access to the premises for all patrons.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Five Guys JV Limited against the Royal Borough of Kensington and Chelsea Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether suitable access would be available for all customers of the premises.

Reasons

4. The premises, No 183, are occupied as a restaurant. No 183 has a newly installed shopfront, with planning permission for it having been granted under planning permission PP/16/08021 (the permission). The restaurant's ground floor level is around 150mm higher than the pavement.
5. Condition 8 of the permission required that prior to the shopfront's installation details showing that it would provide 'inclusive access for all patrons' be submitted for the Council's approval. The reason for condition 8's imposition was to ensure that the development would accord with criterion b.iv of Policy CL10 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan of 2015 (the Local Plan). I consider that criterion b.iv of Policy CL10 to be consistent with the Planning Practice Guidance's design

guidance for access and inclusion, which amongst other things, states '*Good design can help to create buildings and places that are for everyone. Planning can help break down unnecessary physical barriers and exclusions caused by the poor design of buildings and places ... Issues to consider include ... whether entrances to buildings are clearly identified, can be reached by a level or gently sloping approach and are well lit*¹.

6. The new shopfront has, however, been installed with a stepped access and use is being made of a temporary external access ramp and call bell. The bell being used by customers to request the ramp's deployment. The ramp is removed once it has been used by customers who require its assistance.
7. The temporary ramp's deployment will enable customers who cannot negotiate the step to enter or leave the premises. However, the ramp's deployment is dependent upon there being a member of staff available to put it into position without delay and remove it so that it does not become a trip hazard for pedestrians using Kensington High Street. At peak trading periods for the restaurant there can be no guarantee that a member of staff would be available to quickly respond to a request to deploy the ramp or remove it after its use. I therefore consider that reliance on a temporary ramp is a far from ideal access solution for customers with a physical disability.
8. The appellant has submitted that to install a permanent internal ramp it would be necessary to undertake physical alterations that would affect the structural stability of No 183. That is because alterations would need to be made to the floor slab and the associated supporting structure. It has been submitted that the cost of installing an internal ramp would run into several hundreds of thousands of pounds, with a loss of revenue also arising during the construction period². The appellant's structural engineer has advised against undertaking works that might affect the integrity of the existing ground floor slab and the engineer has gone on to state 'We would recommend against undertaking any works to the existing slab if other feasible options exist'³. While the appellant's structural engineer has expressed some reservations about making alterations to the floor slab, I consider the structural evidence contained in appendix 4 of the appellant's statement of case⁴ does not demonstrate that an internal ramp would be incapable of being installed for technical reasons.
9. I also have reservations as to whether the works associated with installing an internal ramp would be as structurally challenging as contended by the appellant when No 183 is compared with the immediately neighbouring premises. That is because No 183 is in the middle of a block of multi storey premises, with basements, at Nos 171 to 195. Nos 171 to 195 appear to have been designed and built at the same, given their shared architecture. With the exception of the bookmakers, a few doors down from No 183, the other premises at Nos 171 to 195 either have internal ramped accesses or level accesses. Given Nos 171 to 195 appear so similar in design, and are therefore likely to share many of the same structural characteristics, the appellant's evidence does not persuade me that there is anything particularly

¹ Paragraph: 012 Reference ID: 26-012-20140306

² Email from the appellant's agent to the Council of 5 July 2017 included in Appendix 5 of the appellant's statement of case and paragraph 7.21 of the appellant's statement of case

³ Email of 19 June 2017 from Clancy Consulting included in Appendix 4 of the appellant's statement of case

⁴ The one page email of 19 June 2017, photographs and cross section sketch

structurally unique about No 183. I therefore consider that the available evidence does not support the appellant's contention that providing an internal ramp would adversely affect No 183's stability.

10. No detailed cost estimate for undertaking the structural works has been provided. Nor have any estimates concerning the duration of the construction works or the associated loss of revenue been provided. I therefore consider that the appellant's claims that the overall cost of installing an internal ramp would be hundreds of thousands of pounds and be 'hugely disproportionate' have not been demonstrated.
11. I am therefore not persuaded that the appellant has demonstrated that a replacement shopfront with a stepped access is unavoidable. The Council has adopted two relevant Supplementary Planning Documents (SPD). The first of those SPDs is the Access Design Guide of 2010 (the access SPD) and it states, as a principle that 'All shops and buildings open to the public should provide a step free entrance into the building' (paragraph 5.0.1). The access SPD further states at paragraph 5.0.3 that where there is a small existing stepped level change between the building and the pavement then it may be possible to overcome that using an internal ramp. At paragraph 4.1.18 of the access SPD the Council acknowledges that where there is a small stepped change and it is not possible to provide a ramped access then the use of a portable ramp with a bell may be a solution.
12. The second of the SPDs is the Shopfront Design Guidelines SPD of 2011 and it states in the first bullet point under the first numbered paragraph 3.3.3.4 that new shopfronts should have a level or ramped access. It is acknowledged in the shopfront SPD that in circumstances where a ramped internal access may need to be provided an exception may be made if structural beams, floor slabs, socket outlets or basement lights would preclude the installation of a ramp (second bullet point in the second of the paragraphs numbered 3.3.3.4). However, for the reasons I have given above, I consider that the available evidence has not demonstrated that there are structural factors precluding the installation of an internal ramp.
13. While there are some premises in Kensington High Street that have temporary ramps, none of those premises are at Nos 171 to 195. There may be structural reasons why an internal ramp installation was not possible at those other properties. I therefore consider that the limited number of premises with temporary ramps does not justify the use of one at No 183.
14. For the reasons given above I conclude that it has not been demonstrated that the shopfront that has been installed includes suitable access for all customers of the premises. I therefore consider that the details submitted to discharge condition 8 of the permission have not demonstrated there to be compliance with criterion b.iv of Policy CL10 of the Local Plan or the access and shopfront SPDs. That is because the available evidence has not demonstrated that the use of a temporary access ramp is the most appropriate means for the new shopfront to provide inclusive access for all.
15. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR