



Appeal Decision

Site visits made on 19 and 20 June 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2019

Appeal Ref: APP/F5540/W/19/3226172

1 Spur Road, Isleworth TW7 5BD

- 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 MJD Alkazzaz against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 01052/1/P4, dated 18 November 2018, was refused by notice dated 4 February 2019.
 - The development is described as 'Retention of the existing ancillary use of shisha premises at the front of the property.'
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Decision

1. The appeal is dismissed insofar as it relates to the outdoor seating area at the front of the property.
2. The appeal is allowed insofar as it relates to the change of use of the building to a café at 1 Spur Road, Isleworth TW7 5BD in accordance with the terms of the application Ref 01052/1/P4, dated 18 November 2018, so far as relevant to that part of the development hereby permitted, and subject to the conditions in the attached schedule.

Procedural Matters

3. The application is retrospective, as was evident from my site visits in the evening, when the outdoor seating area was in use by customers, and during the day when the premises was closed but the outdoor seating area structure remained in place in front of the property. Regardless, I have dealt with the appeal on its planning merits.
4. The description in the banner heading above is taken from the application form. However, it is clear from the appeal form that the appellant agrees to the Council's revised description on the refusal notice as 'Retrospective application for the use of a café with shisha premises at the front of the property.' Paragraph 3.1 of the appellant's statement confirms that the appellant is seeking planning permission to 'continue using the building as a café, with outdoor seating area for the smoking of shisha pipes'. I have therefore used both of these concepts in the descriptions in paragraphs 1 and 2 above. However, as the terms 'retrospective', 'continue using', and 'retention' are not definitions of development I have removed them.

Main Issues

5. The main issues are the effect of the proposal on:

- The character and appearance of the area with regards the outdoor seating area, and
- Highway safety, with regard to pedestrian movements and proposed highway infrastructure works.

Reasons

Character and appearance

6. The appeal property is a single storey commercial unit prominently located on the corner of Spur Road and London Road. It is at the apex of two parades of shops that have a range of uses including a newsagents, convenience stores, solicitors, hairdressers and various hot food takeaways. Outside the appeal property, the pavement widens and opens out to take account of the corner location. The corner is at a crossroads junction on a busy route into and out of London. There are traffic lights, feeder lanes and also a demarcated cycle lane that runs across the pavement in front of the appeal property. There are also two controlled pedestrian crossings that converge on the pavement area outside the appeal premises. The northern edge of the Isleworth Riverside Conservation Area, a designated heritage asset, is opposite the appeal property on the south side of London Road.
7. The proposal is for a change of use of the building to a café and provision of an outdoor seating area in front of the property, intended for the smoking of shisha pipes. The outdoor seating area comprises a substantial semi-permanent timber structure with a timber floor. The lower parts of the sides are red/brown painted plywood timber plant boxes on castor wheels, partially covered with signage and illustrations advertising the name of the premises. Transparent plastic sheeting comes down the sides and front to meet the timber plant boxes. There is a canopy over the seating area that apparently already existed and does not form part of this appeal. The Council raises no issue to the use of the building as a café.
8. The outdoor seating structure extends across the entire width of the property and projects out into the pavement a substantial distance. Furthermore, the materials have a low-quality appearance which detracts from the overall appearance of the parade and street scene. The plastic sheeting and its crinkly nature compounds this, particularly at night when the light catches the plastic sheeting. Hence, by reason of its size, scale, design and position it is visually prominent on this corner location and harmful to the character and appearance of the immediate area.
9. I accept that the outside seating area has the potential to bring some interest and character to the street scene and area. However, I observed from my visit during the day that when the premises are closed the shopfront is shuttered and the structure remains in place, although the front plastic sheeting had been removed or rolled up. This adds little to the interest or vitality of the street scene and makes the outside seating structure even more visually detrimental. In my view, any contribution the outdoor seating area would make to the vitality of the street scene does not outweigh the harm I have already identified.

10. I conclude that the semi-permanent outdoor seating area structure would harm the character and appearance of the area. Accordingly, it would be contrary to Policies CC1 and CC2 of the Local Plan (LP) adopted in 2015, that seek to ensure development improves the qualities of an area and that poor design is refused.

Highway safety

11. The appellant claims the land on which the seating area is sited is in private ownership and hence not part of the highway. However, the Council has confirmed, with the submission of its highway register map, that all the land in front of the appeal property is part of the adopted highway, although in private ownership but not by the appellant. I have not been presented with any substantive evidence from the appellant to counter this position.
12. The outside seating area introduces a semi-permanent structure close to the demarcated cycle path and pedestrian crossing points, reducing the pavement area available for pedestrians and cyclists to move and circulate, including those with impaired mobility, particularly at busy times. There are offices and schools in close proximity to the site so there would likely be school children and workers crossing, gathering or dispersing by the seating area. As such, the seating structure would obstruct and inhibit pedestrian and cyclist movements, adversely affecting highway safety.
13. The Council has advised me of planned expansions of nearby schools, which will increase pedestrian movements in the vicinity of the appeal site, and the necessary planned junction improvements. There are also plans for Cycle Superhighway 9 as part of a wider strategic transport project to improve sustainable transport in London. The appellant's Appendix E shows a broad outline of planned improvements and the Council's submitted drawing 'Cycle Superhighway 9 Concept Design section 3' shows the cycle highway passing in front of the premises, albeit on an alignment further away from the seating area. The concept design also shows possible kerb line realignments and provision of vehicle loading bays constructed into the pavement near the appeal site. Together, these works could further reduce and restrict footpath widths. This would further inhibit pedestrian movements if the space is partially occupied by the seating area, particularly for those with impaired mobility. Whilst details have not been finalised they indicate a strategic transport infrastructure project of wider public benefit that could be prejudiced by the semi-permanent seating area.
14. The Council also advises it would object to any 'Stopping-Up' order to use the land for the seating structure, as it would obstruct pedestrian movements. Whilst this is a separate process to planning, it indicates the Council's wider concerns. The siting of just tables and chairs on the pavement can be less of an obstruction as they can be removed each evening when the premises are closed.
15. I find that the semi-permanent seating area structure in front the appeal property serves to reduce pedestrian movements at a busy junction and would harm highway safety. It would also prejudice the delivery of a strategic transport infrastructure project. Accordingly, it is contrary to LP Policy EC2 that seeks to develop a sustainable local transport network to maximise opportunities for walking, cycling and public transport.

Conditions

16. The Council has suggested 4 conditions, which the appellant agrees to, but these apply to the outside seating area as well. It is necessary for me to consider whether or not conditions could be imposed to control the risk of future harm. Any condition would have to meet the statutory tests and be necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. I have reviewed the Council's suggested conditions and where necessary and in the interests of precision and clarity I have amended the wording to accord with the Planning Practice Guidance.
17. The Council's first condition relates to the submitted plans. As the café development has already been carried out, this is no longer required.
18. The second condition relates to storing and collection of waste and recycled material and is relevant and necessary (condition 1). However, as the café is already operating I have imposed a timescale of 1 month for the submission of details. Once the details have been approved by the Council, the appellant will have 1 month to implement them.
19. The hours condition is necessary and relevant to safeguard the living conditions of nearby residents, but I have amended it to remove reference to the sui generis shisha lounge (condition 2).
20. The Council's fourth condition relates to noise emitted from mechanical plant and I consider this necessary and relevant in light of residential flats nearby (condition 3). However, I have included odour extraction plant as well, for the reason below.
21. In its report, the Council refers to the need to have details of extract flues for odour extraction for the café use. However, the Council has omitted to include it in its list of suggested conditions. As odour extraction is relevant and necessary, as there are residential flats nearby and permission runs with the land, I am imposing a condition requiring details of extraction equipment to control odour to be submitted (condition 4). As the café is already in use, I have imposed a time limit of 2 months for the submission of odour extraction details. Once the details have been approved by the Council the appellant will have 1 month to install the approved equipment.

Other matters

22. The appeal proposal, taken as a whole as a business expansion, would offer some social, community and local economic benefits but I am not persuaded that the ancillary outside seating area, intended for the smoking of shisha pipes, would contribute significantly above and beyond the café use. The café use itself already contributes to the local economy and offers social and community benefits and the Council has no objection to it.
23. I have had regard to the proximity of the appeal site to the adjacent Isleworth Riverside Conservation Area (CA) and am mindful that there may be an effect on the setting of a designated heritage asset. However, the Council has not raised any concerns that the proposal would cause harm to the setting of the CA. Whether it would or wouldn't, because of my finding on the main issues above, this is not a matter I need to consider any further.

Conclusion

24. The appellant has invited me to issue a split decision should I find parts of the appeal scheme to be acceptable and others unacceptable. The semi-permanent outdoor seating area is ancillary and clearly severable, both physically and functionally, from the use of the building as a café.
25. Accordingly, for the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed insofar as it relates to the use of the building as a café, but is dismissed insofar as it relates to the outdoor seating area structure.

K. Stephens
INSPECTOR

SCEHDULE OF CONDITIONS:

- 1) Within 1 month of the date of this consent, details of the arrangements for the storing and collection of waste and recycled materials shall be submitted to the Council in writing. Within 1 month of the Council's written approval the approved arrangements for storing waste and recycled materials shall be carried out.
- 2) The café use hereby permitted shall not be carried out outside the following times: 08:00 to 22:30 Mondays to Saturdays and 10:00 to 21:00 on Sundays and Bank Holidays.
- 3)
 - a) The cumulative measured or calculated rating level of noise emitted from the mechanical services plant including heating, ventilation, odour extraction and air conditioning to which the application refers, shall be 10dB(A) below the existing background noise level, at all times that the mechanical system etc operates. The measured or calculated noise levels shall be determined at the boundary of the nearest ground floor noise sensitive premises or 1 meter from the facade of the nearest first floor (or higher) noise sensitive premises, and in accordance to the latest British Standard 4142; An alternative position for assessment /measurement may be used to allow ease of access, this must be shown on a map and noise propagation calculations detailed to show how the design criteria is achieved.
 - b) The plant shall be isolated on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
 - c) Following installation of any mechanical services plant including heating, ventilation, odour extraction and air conditioning, a post completion noise assessment shall be submitted for approval to the local planning authority which demonstrates the actual measured rating level of plant operating under normal conditions. All measurements shall be made in accordance with the methodology of BS4142: 2014 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments.
- 4) Within 2 months from the date of this consent, full details of odour extraction equipment shall be submitted to the Council in writing. The approved odour extraction equipment shall be installed within 1 month of the Council's written approval and thereafter retained and maintained in good working order.