



Appeal Decision

Site visit made on 19 November 2019

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/X5990/W/19/3236216

Fantasia Palace, 28 Praed Street, London W2 1NH

- 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 Omar Mohammed against the decision of City of Westminster Council.
 - The application Ref: 19/04319/TCH, dated 3 June 2019, was refused by notice dated 25 July 2019.
 - The development proposed is use of public highway for the placing of four canopies, eight tables, 24 chairs, four planters (in an area measuring 1.2m x 13.2m on the South Wharf Road frontage) and placing of two canopies, three tables, 12 chairs and four planters (in an area measuring 1.2m x 5m on the Praed Street frontage) in connection with existing use.
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Decision

1. The appeal is allowed and planning permission is granted for use of the public highway for the placing of four canopies, eight tables, 24 chairs and two planters (in an area measuring 1.2m x 13.2m on the South Wharf Road frontage) and the placing of two canopies, three tables, 12 chairs and two planters (in an area measuring 1.2m x 5m on the Praed Street frontage) and two smaller planters outside each of the entrances on South Wharf Road and Praed Street in connection with the existing use at Fantasia Palace, 28 Praed Street, London W2 1NH in accordance with the terms of the application, Ref: 19/04319/TCH, dated 3 June 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of development used in the banner heading above is taken from the Council's decision notice and the appeal form as it more clearly and simply describes the proposal and existing use, compared with the application form. However, I have amended the description of development in the formal decision because the relevant submitted plan¹ indicates that the two smaller additional planters proposed for the Praed Street and South Wharf Street entrances would be outside the two areas specified in the description and shown on the plans.

¹ Drawing No. 01 Rev. A

Main Issues

3. The main issues are the effect of the development on:

- the safety of pedestrians using the footpaths along Praed Street and South Wharf Road; and,
- the character and appearance of the host building, the street scene and the Bayswater Conservation Area (BCA).

Reasons

Highway Safety

4. The appeal site comprises a restaurant situated on the corner of Praed Street and South Wharf Road. The site has a history of outside tables and chairs dating back to 2007. It currently benefits from an extant temporary 12-month consent granted on 18 February 2019 for tables and chairs outside its Praed Street and South Wharf Road frontages (the extant permission).² The planning history confirms a series of similar consents over the years. The appellant advises that the appeal proposal involves some additional tables and a different layout from the extant permission.
5. According to the Council's decision notice, the proposed tables and chairs *'would block the flow of pedestrians along the footpath and so could be unsafe.'* The Council calculates, based on the relevant submitted plan, that the pavement from the building line to the kerb edge along South Wharf Road is 3.7m and along Praed Street is 3.3m. The Council appears to accept that the proposal could meet the minimum 2m clear pavement width requirement specified in its 'Westminster Way' (WW) guidelines, with about 2.5m retained along South Wharf Road and 2.1m clear for pedestrian use on Praed Street.
6. However, the Council also refers to its 'Highways Planning Guide' (HPG)³, which estimates that the space required for a diner to sit down or get up from their seat is 0.55m. On that basis, it calculates that some of the seating, which is shown at right-angles to the building line on the relevant submitted plan, would overspill beyond the 1.2m width shown on the plans and, therefore, compromise the 2m clear minimum requirement. However, given its calculation that the operational depth required for the tables and chairs, in those instances, would be 1.7m and that the overall width of the South Wharf Road pavement is said to be 3.7m, it appears that the 2m guidance requirement would still be met along that road.
7. With regard to Praed Street, only 3 tables and 12 chairs are proposed over a length of 5m. While the 2m minimum clear width, recommended in the WW, would potentially be compromised that would only be likely over relatively brief periods when a customer, sitting in those particular chairs, is pushing the seat back to stand up or about to sit down. For most of the time the 2m guidance width would be respected. That would equally apply to any possible transgression, in that regard, along South Wharf Road.
8. As I saw on my site visit, the surface treatment of the two areas to be occupied by the tables, chairs, canopies and planters adjacent to the building elevations, is visually distinct from the paved footway between it and the kerb. Moreover,

² 19/00054/TCH

³ April 2004

the width of the paved footway available beyond the appeal site to the southwest along Praed Street and to the west along South Wharf Road is already a similar width to that which would remain if the proposal were approved. Therefore, pedestrians approaching from that direction would already be using a similar pavement width and the visual surface demarcation would tend to lead them to continue to walk on the existing paved area. In any event, the width of clear footpath remaining would be sufficient to safely accommodate pedestrian flows.

9. Furthermore, the Council appears to have approved numerous applications for tables and chairs at the same site over a considerable period of time, albeit in slightly different positions, configurations and volumes, but within a similar envelope. The Council has not provided evidence to show that their presence has obstructed pedestrian flows along the pavements or led to highway safety issues over that period. Otherwise, presumably it would not have continued to grant consents, including the extant permission. While the appeal proposal involves two additional tables and a different layout, the amount of seating appears similar to the extant permission. Overall, I do not consider the differences between that extant scheme, which the Council considered acceptable, and the appeal scheme to be significant. Therefore, I am not persuaded that it would lead to harm.
10. On Praed Street a lamp post and a belisha beacon marking a zebra crossing are in the vicinity but would not be immediately adjacent to the proposed tables, chairs and planters. Therefore, they would not contribute to any cumulative obstructive effect. Although there is an adjacent lamp post on South Wharf Road, the pavement is wide enough to accommodate that limited street furniture in addition to the proposed items, while not significantly interfering with pedestrian use. Given the above and accepting that pedestrian movement and a safe pedestrian environment must be prioritised, I do not consider that the development would have any significant adverse effect in those respects.
11. The Council also briefly suggests that the proposal '*does not allow for disabled seating or offer a buffer area for service or access*', again referring to the HPG which suggests a gap of 0.9m for service. With regard to disabled access, the seats could be temporarily adjusted, or a seat could be removed or relocated, if required. Furthermore, the appellant advises that there is level access into the restaurant for disabled customers which should also enable them to be accommodated. In terms of a service area, it seems to me that there would be sufficient space around the tables for a waiter to take orders without intruding on the clear pavement area beyond.
12. Although not specifically alluded to or explained in the Officer's Report, the Council's decision notice introduces a concern that the proposal '*would also make it difficult to clean the footpath.*' The appellant advises that the tables and chairs would continue to be stored within the building when the restaurant is closed, which should provide opportunities for the footpath to be cleaned. That aspect could be secured by condition. Indeed, the Council has suggested a condition to that effect in the event that the appeal were allowed. Moreover, the Council has granted consent for tables and chairs at the same location on a similar basis before.
13. I conclude, therefore, that the proposal would not have a material adverse effect on the movement or safety of pedestrians using the footpaths along

Praed Street and South Wharf Road. It follows that the proposal would comply with policy S41 of the Westminster City Plan (WCP)⁴ and policies TRANS 3 and TACE 11 of the Council's Unitary Development Plan (UDP)⁵, insofar as they all seek to prioritise pedestrian movement and create a safe pedestrian environment.

Character and appearance

14. The Council expresses specific concern about the effect of the proposed wooden planters, which it submits would cause visual clutter and harm the appearance of the building and the character and appearance of the BCA.
15. While the appeal building is not listed and the Council does not suggest it has a particular heritage value, it is an interesting three storey corner building clad in blockwork with mock Tudor black and white timber to the top storey. Historic signage on the upper levels, promoting Truman's Burton Ales and the Truman Hanbury Buxton and Co. Ltd (London and Burton), indicates that it is a former public house. It is also adorned with some notable architectural detailing, including crenellations and some amusing gargoyles flanking the main elevations.
16. Nevertheless, while the building is of some architectural quality and historic interest, its appearance would not be adversely affected by two small planters at the restaurant entrances and two taller but relatively modest timber planters usefully bookending the proposed seating areas.
17. The Council Officer's Report advises that this part of Praed Street is within the 'core frontage district shopping centre', which is characterised by shops and food outlets with residential flats above. Timber planters associated with outdoor seating areas are not unusual features outside restaurants, pubs or cafes in such shopping areas. Moreover, there are some planters, hedges and street trees nearby. Therefore, within that context the modest timber planters would not appear out of place.
18. The site also lies within the BCA and I am mindful of the statutory protection afforded to conservation areas and the need to pay special attention to the desirability of preserving their character and appearance.⁶ I have also considered relevant guidance within the National Planning Policy Framework (the Framework).⁷
19. The BCA General Information Leaflet (GIL)⁸ indicates the key features of the conservation area are several large areas of 19th century architecture of predominantly stuccoed terraces, with later residential development in between, while Praed Street is noted for local shops on its southern side. Open spaces with fine trees and formal squares are also cited as essential elements in the townscape composition and character of the area.
20. Based on that assessment, which is largely confirmed by what I saw on my site visit, I do not consider that the principal elements which contribute to the character and appearance of the BCA and its significance would be adversely affected by the proposed planters or any other elements of the proposal.

⁴ November 2016

⁵ Adopted January 2007

⁶ s.72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

⁷ February 2019

⁸ City of Westminster (October 2004)

Indeed, the planters would provide some additional greenery softening the hard surfaces and built form which predominate in the immediate area of the appeal site.

21. Given the above, I conclude that the proposal would not harm the character or appearance of the host building, the street scene or the BCA. Therefore, it would comply with policies S25 and S28 of the WCP and policies DES 1, DES 5 and DES 9 of the UDP which seek, amongst other things, to ensure that development conserves heritage assets, including conservation areas, and that it incorporates exemplary standards of design.

Conditions

22. The Council has suggested conditions which I have considered, making amendments, if necessary, to ensure compliance with the tests contained in the Framework⁹ and the Planning Practice Guidance (PPG). Conditions requiring the development to be carried out in accordance with the approved plans are necessary for certainty.
23. The Council has suggested a condition limiting the use to one year. That is on the basis that it would not be appropriate to give a permanent permission to change the use of land which forms part of the public highway, as s130(1) of the Highways Act 1980 states that the highway authority has a duty to assert and protect the rights of the public to the use and enjoyment of the highway. The Council also maintains that a temporary permission enables a periodic assessment to be made of the effect on the public highway, to ensure that any effects remain acceptable.
24. Therefore, while the PPG generally advises against repeat temporary permissions, in this case the principal of temporary use is necessary and reasonable. However, given the succession of previous temporary consents, and that I have found that the proposal would not cause any clear harm, I consider limiting the permission to one year would be unreasonable and place an unnecessary burden on the appellant, in continuing to have to make frequent planning applications for the same or similar development. I note that the appellant suggested that the permission should be for 5 years or, if that was not acceptable, 3 years. Given the above, factors, I consider that a three year period would be reasonable and have amended the suggested condition accordingly.
25. A condition limiting the time period during the day that the tables and chairs may be placed on the pavement is necessary to protect neighbouring residents from possible noise and disturbance. Although the hours specified within the Council's suggested condition differ marginally from those proposed in the appellant's Design and Access Statement (June 2019), I consider them to be reasonable and the appellant has not specifically objected to those hours. A condition controlling the design and appearance of the tables, chairs, planters and canopies and preventing additional items from being placed on the pavement is necessary to protect the character and appearance of the BCA.
26. The Council suggested a condition stating that the tables and chairs must only be used by customers, with the reason given as to protect neighbouring residents from noise and disturbance. However, given the condition restricting

⁹ Paragraph 55

hours of use, I do not find that further condition necessary. Moreover, it is unlikely that the appellant would, in any case, allow the tables and chairs to be used by non-patrons. Therefore, I have omitted that suggested condition.

Conclusion

27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

JP Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: OS Location Plan (Drawing No. OS) and Outside Tables, Chairs, Canopies and Planters (Drawing No. 01 Rev. A).
- 2) You must not put the tables, chairs, canopies and planters hereby permitted in any other position than that shown on Drawing No. 01 Rev. A.
- 3) The use hereby permitted may continue for three years after the date of this decision, after which time the tables, chairs, canopies and planters must be removed.
- 4) You can only put the tables, chairs and canopies on the pavement between 0900 hours and 2300 hours on Sundays to Thursdays and from 0900 to midnight on Fridays and Saturdays.
- 5) You can only put on the pavement the tables, chairs, canopies and planters shown in the details submitted, as illustrated within the Design and Access Statement (June 2019), in respect of the furniture design. No other furniture, equipment or screening, other than that hereby permitted shall be placed on the pavement.

END OF SCHEDULE