



Appeal Decision

Site visit made on 11 November 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/K5600/W/19/3231542 236 Fulham Road, London SW10 9NB

- 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 Mark Gudgin (Cote Restaurants Ltd) against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/00243, dated 11 January 2019, was refused by notice dated 27 February 2019.
 - The development proposed is installation of externally mounted retractable awnings to the Hollywood Road and Fulham Road facades. Alterations to the Hollywood Road shopfront facade with new set back timber and glass sliding / folding door panels x2 sets. New external wall and awning lights. New fixed timber planters.
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Decision

1. The appeal is allowed and planning permission is granted for installation of externally mounted retractable awnings to the Hollywood Road and Fulham Road facades. Alterations to the Hollywood Road shopfront facade with new set back timber and glass sliding / folding door panels x2 sets. New external wall and awning lights. New fixed timber planters; at 236 Fulham Road, London SW10 9NB in accordance with the terms of the application, Ref PP/19/00243, dated 11 January 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. On 11 September 2019 the Council adopted the Local Plan Partial Review (LPPR) and thus the updated policies now form part of the development plan and supersede older policies. However, the policy referred to in the decision notice is unchanged, and where changes have been made to other policies, these do not have any direct bearing on the appeal proposals before me.
3. I have also dealt with another appeal on this site (Appeal reference: APP/K5600/W/19/3231540), which is the subject of a separate decision.

Main Issue

4. The awnings, lights and planters did not feature in the reason for refusal, but as they are present on the proposal drawings, they form part of the application for which planning permission is sought. However, as there appears to be no dispute between the parties over those works, and it also appears that planning permission¹ may have been granted for the awnings under a separate planning

¹ ref:PP/19/01423

application made to the Council, I shall confine my considerations principally to the proposed glass sliding / folding doors within the Hollywood Road elevation.

5. Therefore, the main issue is the effect of the glass sliding / folding doors on the living conditions of the occupiers of 1-4 Brompton Cottages and other residential properties in Hollywood Road, with particular regard to the potential for noise and disturbance.

Reasons

6. The appeal site is a restaurant located at the corner of Fulham Road and Hollywood Road. The customer entrance to the restaurant is located on Fulham Road. The two floors directly above the restaurant contain residential flats (1-4 Brompton Cottages). The current restaurant trading hours do not permit customers being admitted after 2300 hours Monday to Saturday and 2230 hours on Sunday and public holidays.
7. The Council and neighbouring residents are concerned that the new doors in the Hollywood Road elevation, when open, would lead to disturbance from noise escaping from the restaurant. This is understandable, particularly as the flats above the restaurant have their main windows facing Hollywood Road, with other residential properties in Hollywood Road also nearby. The potential for disturbance would be most likely during the summer months when the windows of nearby properties are more likely to be open.
8. This part of Fulham Road is a busy thoroughfare characterised by a range of uses including restaurants, bars, shops, offices, a 24 hour gym, and the Chelsea and Westminster Hospital, which has its main entrance directly opposite the appeal site. There is also a bus stop outside the appeal site where people congregate and buses stop regularly. As such, the vicinity is subject to a high level of footfall and traffic with the associated hustle and bustle of pedestrian and vehicle noise throughout the day and into the evening.
9. Whilst Hollywood Road has a more residential character, it has commercial uses at both ends of the road. The bottom section includes the appeal site, a creperie, beauty clinic and office building. The top section contains numerous restaurants and a pub, almost all of which appear to make use of tables and chairs outside on the pavement. I also noted live music being advertised at the pub. These eating and drinking establishments are likely to be busier in the evenings and attract footfall and traffic to and from Fulham Road. Indeed, a neighbouring resident of Hollywood Road has referred to incidents of anti-social behaviour from pub customers wandering down the road. Therefore, I do not agree that Hollywood Road is wholly residential, as some have described it.
10. The appellant's Noise Assessment (NA)² confirms my own observations that ambient noise levels in the vicinity of the appeal site are high and shows barely any drop off at night up to the appeal site's closing times. It also calculated the predicted noise levels at the closest window of the flats above, which I agree is an appropriate methodology for the development concerned. It demonstrates that even when taking a worst case scenario of the restaurant at full capacity with the doors being fully open, the noise from the open doors would be below existing noise levels. In the absence of evidence to lead me to believe otherwise, I have no reason to disagree. I also noted that the sliding doors at

² Report reference: 181008-R002A for Cote Restaurants Limited 18 June 2019

the front could be opened so there could already be some noise breakout from the restaurant. As such, it is unlikely that restaurant noise from the new open doors would be readily distinguishable from the existing noise character during the restaurant opening times. Thus, I am satisfied that the effect of the proposals would be within the 'no observed adverse effect level' in the terms of the Planning Practice Guidance (PPG) advice on noise³ and therefore, would not cause undue noise and disturbance to neighbouring residents.

11. In reaching this finding, I have had regard to the Council's contention that the noise levels measured are averages and that at times the ambient noise levels will be lower, but the measurements were taken over a five day period and show that the ambient noise level remained consistent throughout. The Council also contends that noise from customers talking, laughing and shouting is not currently part of the character of Hollywood Road and is therefore likely to be more noticeable near the furthest point from Fulham Road. However, as I have described above, there are other eating and drinking establishments with pavement seating further up Hollywood Road. Moreover, the vicinity of the appeal site has significant pedestrian activity with voices being a major contributor to its bustling character and ambient noise levels.
12. Neighbouring residents have also raised further concerns over potential use of the doors as an entrance allowing people to spill out onto the pavement outside and cause additional disturbance through inconsiderate behaviour, but the planting boxes would prevent that from happening. A condition could ensure that the planting boxes are retained in the interests of certainty. There are also concerns that the proposals would lead to providing an outdoor seating area; however, it is clear from the plans that all restaurant seating is to be contained wholly within the existing building. Any proposal for tables and chairs on the pavement outside the appeal premises is likely to require planning permission and would be assessed by the Council on its own merits in such an eventuality.
13. Notwithstanding all the above, I accept that it would still be necessary to limit the times in which the doors could be opened to prevent the potential for disturbance later in the night at times when other establishments in Hollywood Road are closed and when neighbouring residents would have their highest expectations for quiet and undisturbed sleep. Based on the evidence before me, it would not be reasonable or necessary for this to be earlier than the current restaurant admission restrictions of 2300 hours Monday to Saturday and 2230 hours on Sundays and public holidays, which is also around when most other establishments on Hollywood Road appear to close. This matter could be covered by a condition.
14. Therefore, on the main issue, I conclude that the proposed glass sliding / folding doors would not harm the living conditions of the occupiers of 1-4 Brompton Cottages and other residential properties in Hollywood Road with particular regard to noise and disturbance. This is in accordance with LPPR Policy CL5, where it seeks to ensure good living conditions for occupiers of existing and neighbouring buildings having regard to, among other things, increase in noise.

³ Paragraph: 005 Reference ID: 30-005-20190722

Other Considerations

15. The appeal site is outside, but adjacent to The Boltons Conservation Area (BCA). The Council has not objected to the visual appearance of the proposals and I agree that they are complementary to the character of the building and surrounding area. Given my overall findings, I am satisfied that there would be no harmful effects on the adjacent BCA and as such, its character and appearance would be preserved.
16. The potential for creating a precedent for commercial creep down Hollywood Road has been raised as a concern by some local residents, but the proposals relate to an existing commercial premises and there are already other commercial premises further down Hollywood Road with opening doors. Irrespective, each proposal has to be considered on its own merits, which is the approach I have taken in this appeal.
17. The concerns over obstruction from the awnings and light brackets, as well as light pollution, were before the Council when it determined the appeal planning application and it found that they did not warrant the refusal of planning permission. Given the evidence before me, I have found no reason to disagree and, in any event, it appears that planning permission has subsequently been granted for the awnings.
18. It is unfortunate if there was no engagement with neighbouring residents during the recent refurbishment works, but that does not alter my consideration of the planning merits of the appeal.
19. Consequently, none of the other issues raised lead me to a different conclusion in this appeal.

Conditions

20. I have considered the suggested planning conditions against advice in the National Planning Policy Framework and the PPG to ensure they meet the relevant tests.
21. The standard time limit condition as well as a condition that the development is carried out in accordance with the approved plans are necessary for the avoidance of doubt and in the interests of proper planning. Conditions to limit the times in which the doors could be opened and to retain the planting boxes are necessary to safeguard the living conditions of nearby residents, as already explained above.

Conclusion

22. For the reasons given and having taken into consideration all matters raised, I conclude that the appeal should be allowed.

Adrian Caines

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: OS.01; AD.03 Rev B; AD.04 Rev B; AD.06 Rev A; EL.1.01; EL.1.02; EL.1.03; GA.B.00; GA.B.02; GA.G.00; GA.G.02; Retractable awning detail.
- 3) The sliding/folding doors in the Hollywood Road elevation shall be kept shut between 2300 hours and 0800 hours the following day Monday to Saturday; and 2230 hours on Sunday and Public Holidays and 0800 hours the following day.
- 4) The fixed timber planting boxes shall be permanently retained within the recesses in front of the sliding/folding doors in the Hollywood Road elevation.

End of conditions