



Appeal Decision

Site visit made on 29 January 2020

by C L Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref: APP/K5600/W/19/3240763

142 Brompton Road, London SW3 1HY

- 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 Serdar Demir (Skewd (Knightsbridge) Limited) against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/04304, dated 12 June 2019, was refused by notice dated 19 September 2019.
 - The development proposed was originally described as 'Use of two areas of the public highway in connection with the use of the Skewd Kitchen. The first area of public highway measures 0.8 metres by 4 metres and will contain 2 tables and 4 chairs. The second area of the public highway measures 0.8 metres by 4.7 metres and will contain 2 tables and 4 chairs for the placing of two tables and four chairs on the opposite side of the pavement. The placing of the tables and chairs will be between the hours of 08:00 and 22:30.'
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Decision

1. The appeal is allowed, and planning permission is granted for placement of two tables and four chairs on public highway outside the premises and two tables and four chairs on the outer part of the footway next to the railings on public highway between hours of 08:00 and 22:30 at 142 Brompton Road, London SW3 1HY in accordance with the terms of the application, Ref PP/19/04304, dated 12 June 2019, subject to the conditions set out in the Schedule at the end of this Decision.

Procedural Matters

2. The description of development in the banner heading above is taken from the planning application form. However, the Council's decision notice describes the proposal as 'Placement of two tables and four chairs on public highway outside the premises, and two tables and four chairs on the outer part of the footway next to the railings on public highway between hours of 08:00 and 22:30.' The appeal form also uses this description, although it gives the proposed hours as 08:00 – 23:30 rather than 08:00 – 22:30 as set out on the application form and in the revised description on the decision notice.
3. Since no party would be prejudiced or caused any injustice by my doing so, I have considered the appeal on the basis of the description on the decision notice because it more appropriately describes the proposal and reflects the hours of use set out in the planning application.

Main Issue

4. The effect of the appeal proposal upon the safe and secure passage of pedestrians.

Reasons

5. There are a number of food and drink uses in the section of Brompton Road where the appeal site is located. Many have external seating areas immediately in front of the premises on a strip approximately 1.1m wide. This has the appearance of a series of commercial forecourts, being surfaced in a variety of materials and punctuated by planters which define the boundaries of individual premises.
6. By contrast the main footway is visually unified, paved with stone flags, and is broad, straight, level and open. At the outer edge of the footway, near the road, the railings step in regularly around street trees thus creating a series of paved recesses where, at the time of my site visit, there were some tables and chairs associated with adjacent food and drink premises.
7. Overall, the pavement outside 142 Brompton Road is about 5.3m wide, including the 1.1m strip adjacent to the building façade and the recess of around 0.8m at the outer edge of the footway.
8. There is an extant planning permission reference PP/18/08611 for the use of the area of public highway immediately adjacent to No. 142 for the placing of 2 tables and 4 chairs and 2 planters. I noted at my site visit that planters have been installed, though there were no tables or chairs outside.
9. The appeal proposal seeks permission for a further two tables and four chairs on public highway outside the premises and two tables and four chairs on the outer part of the footway next to the railings. I note that the Council raise no objection to the proposed placement of tables and chairs on the recessed footway next to the railings. Based on the evidence and my observations on site, I see no reason to take a different view.
10. The submitted details indicate that the additional tables and chairs proposed immediately outside the premises would, together with those which are the subject of the extant planning permission, extend to a depth of 1m and thus be contained within the 1.1m forecourt strip. Whilst it is possible that some customers may place pushchairs, wheelchairs or bags on the paved footway, and waiting staff could stand there, such occurrences would be transitory.
11. I note the Council's concern that patrons may be tempted to move the tables and chairs to give themselves more space. However, the clear delineation between the main footway and the strip immediately outside No. 142 is likely to deter people from doing this, since such an incursion would be immediately apparent.
12. The Council refers to an appeal decision APP/K5600/W/16/3165993 at 232 – 236 Brompton Road. That appeal scheme differs to the proposal before me in that the Inspector noted a variety of street furniture in the immediate vicinity of the appeal premises which, together with the proposed tables and chairs, would have unacceptably reduced the unobstructed area of footway. By contrast, in this case, the remaining footway would be of a generous width and free from obstruction.

13. The Inspector in the other appeal case noted that patrons would be tempted to move the furniture to give themselves more convenient and spacious seating. I do not have details of the external seating layout proposed in that case. However, during my site visit I observed that No. 232 – 236 has no clearly delineated 'forecourt' and thus there would be no obvious visual or physical deterrent to moving furniture as there is in the case before me.
14. Because there are clear differences between the individual site circumstances, I give the Inspector's findings in this other case little weight. I have determined the appeal on its own merits.
15. Overall, on the basis of the evidence before me, I conclude that the appeal proposal would maintain the primary function of the highway as public footway and so would ensure the safe and secure passage of pedestrians. As such, it would accord with the design and sustainable transport aims of Policies CT1, CR3 and CR4 of The Royal Borough of Kensington and Chelsea Local Plan and The Royal Borough of Kensington and Chelsea Transport and Streets Supplementary Planning Document.

Other Matters

16. The appeal site is in Brompton Conservation Area (CA). In accordance with the statutory duty contained in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area.
17. The CA is characterised by a mix of commercial, religious and residential uses within a diverse range of buildings from different periods and is bounded along its southern edge by the key thoroughfare of Brompton Road.
18. Seating on the pavements outside restaurants is a feature of the commercial areas in the CA and contributes to their vibrancy. The Council's delegated report concludes 'the proposed placement of tables and chairs outside the unit would preserve the character and appearance of the property, Brompton Road and wider conservation area'. Based upon the evidence before me and my observations on site, I agree with this conclusion.

Conditions

19. I have considered the Council's suggested planning conditions against paragraphs 54 and 55 of the National Planning Policy Framework and the Planning Practice Guidance.
20. The Council has suggested a temporary planning permission for a period of 12 months; the appellant has agreed to this condition. A temporary permission would allow for monitoring to fully assess the use of the proposed external seating and its effect on the safe and secure passage of pedestrians and so I have attached a condition to secure this.
21. In the interests of certainty, I have imposed a condition specifying the approved plans.
22. The extant planning permission PP/18/08611 referred to earlier limits the hours of use to between 08:00 and 22:30. I note that the Council's delegated report relating to the appeal proposal concludes at paragraph 6.2 that 'should the application otherwise be acceptable a condition would be attached to limit the

placement of tables and chairs to between the hours of 08.00 and 22.30 hours to ensure that neighbouring living conditions are not harmed at the more sensitive and quieter night time hours.' On the basis of the above, I see no need to impose the reduced hours of use set out in the Council's suggested condition 3. Instead, in the interests of neighbours' living conditions, I have imposed a condition stipulating the hours of use proposed in the planning application.

23. In the interests of sustainable transport and the character and appearance of the area, I agree with the Council that conditions are needed to specify the maximum extent of the tables and chairs adjacent to the building façade, prevent other items being placed within the external seating areas and ensure those areas are swept and kept clear of litter.

Conclusion

24. For the foregoing reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

CL Humphrey

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision. The use hereby permitted shall then be discontinued.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PA/00, PA/02, PA/03, PA/05, PA/06 (all REV 10).
- 3) No table or chair shall be positioned on the highway before 0800 hours and after 2230 hours on any day of the week. Outside these hours, all tables and chairs shall be removed from the public highway and no customers shall be served on the public highway.
- 4) The two tables and four chairs to be placed in the external seating area adjacent to the building façade as outlined in red on the approved plans shall not extend more than 1m from the building façade at any time.
- 5) The external seating areas outlined in red on the approved plans shall be regularly inspected, swept and kept clear of litter during the hours specified in Condition 3.
- 6) No items other than the tables and chairs hereby approved shall be placed in the external seating areas outlined in red on the approved plans at any time.

END OF SCHEDULE