



Appeal Decision

Site visit made on 7 September 2020

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 18 September 2020

Appeal Ref: APP/X5990/Z/20/3245482

Gymkhana, 42 Albemarle Street, London W1S 4JH

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Gymkhana Restaurants Ltd against the decision of City of Westminster Council.
 - The application Ref 19/08741/ADV, dated 8 November 2019, was refused by notice dated 29 November 2019.
 - The advertisement proposed is the display of 1 flag on 1 flag pole.
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Decision

1. The appeal is allowed and consent is granted insofar as it relates to the display of 1 flag on 1 flag pole at Gymkhana, 42 Albemarle Street, London, W1S 4JH, in accordance with the terms of the application Ref 19/08741/ADV, dated 8 November 2019, and the plans submitted with it, so far as relevant to the part of the development hereby permitted and subject to the following 5 standard conditions :
 - 1) No advertisement is to be displayed without the permission of the owner of the site on which they are displayed (this includes the highway authority, if the sign is to be placed on highway land).
 - 2) No advertisement is to be displayed which would obscure, or hinder the interpretation of, official road, rail, waterway or aircraft signs, or otherwise make hazardous the use of these types of transport.
 - 3) Any advertisement must be maintained in a condition that does not impair the visual amenity of the site.
 - 4) Any advertisement hoarding or structure is to be kept in a condition which does not endanger the public.
 - 5) If an advertisement is required to be removed, the site must be left in a condition that does not endanger the public or impair visual amenity.

Procedural Matter

2. The Appellant has requested that this appeal considers only the Council's reason for refusal in relation to the display of 1 flag on 1 flag pole and that they do not wish to appeal the reason relating to the menu board. Section 79(1)(b) Town and Country Planning Act 1990 allows consent to be given to part of a proposal.

3. As the flag and the menu board are clearly severable this is possible in this case. I have amended the description of development to reflect this change with the agreement of the Appellant. For the avoidance of doubt, I will treat the menu board as being dismissed for the purposes of this appeal.
4. The appeal site is located within the Mayfair Conservation Area. In deciding this appeal I have paid special attention to the desirability of preserving or enhancing the character or appearance of the area¹.

Main Issue

5. The main issue is the effect of the flag and pole on the amenity of the area, including the character and appearance of the Mayfair Conservation Area.

Reasons

6. The area is characterised by its busy city centre nature, with substantial predominantly four to five storey buildings with a mix of both historic and modern appearance fronting directly onto the pavement. Ground floor level uses are mostly retail and other commercial, including restaurants such as the appeal site, with associated signage of mixed appearance. Flags on poles at first floor level are also widely seen, with some buildings displaying multiple flags.
7. My attention is drawn to Policy DES 8 of the Unitary Development Plan which seeks to resist permanent flagpoles and flags. In the reasoned justification for this policy the Council acknowledges the need to use its powers flexibly in busy commercial streets in conservation areas, whilst elsewhere also highlighting that flags can have an adverse impact on the appearance of buildings and the streetscape, by obscuring façades and contributing to visual clutter.
8. The justification also provides some flexibility for flag displays in certain commercial streets. Examples of areas where this flexibility may be appropriate are commercial streets such as Regent Street, and Old and New Bond Street (para 10.102). The use of the words 'such as' suggests that this flexibility was not intended to be limited to just these streets and that it may apply in other streets that have similar characteristics.
9. Albemarle Street is one street over from Old Bond Street and where it turns into New Bond Street. It is physically connected to these streets via Stafford Street and Grafton Street, the latter of which I observed a number of flags to be present at first floor level. The buildings in Albemarle Street are also of a similar general scale and appearance to those on Old and New Bond Street and are functionally linked in terms of the mix of commercial uses.
10. In light of these links and the general character of the locality, I am of the opinion that Albemarle Street shares many of the local characteristics present in Old and New Bond Street. Whilst flags in Albemarle Street are not as dominant as those in Old and New Bond Street, they are an integral part of the existing street scene and therefore form part of the character and appearance of the area.

¹ S72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

11. The Council and Appellant present contrasting pictures about the planning histories surrounding the flags already present around Albemarle Road. Although the Council asserts that many are unauthorised, the Appellant has produced evidence to demonstrate that a number of flags benefit from express consent and also distinguishes the examples that are included in the officer's report. The Council have offered nothing further to counter the Appellants evidence which I therefore accept at face value in the absence of a compelling reason not to do so.
12. In light of the existing shared characteristics between the streets discussed above, I judge that the proposed development is capable of attracting the flexibility to the application of Policy DES 8 that is set out in para 10.102.
13. The proposed flag and pole would be similarly located at first floor level to others on the street and would be of a comparable size that would not unduly obscure the building as viewed from the street. Given the local characteristics of this busy commercial area, the single flag on a flag pole proposed would not cause harm to the amenity of the area and would preserve the character and appearance of this part of the conservation area where flags are a characteristic.
14. I have paid regard to the Council's Supplementary Planning Guidance 'Advertisement Design Guide'. However, I find this guidance to be of some age and to add little to what is already stated in Local Plan policy.
15. Consequently I do not find conflict with policy DES8 of the Unitary Development Plan or S25 and S28 of the Westminster City Plan which seeks to resist proposals for flags but includes an element of flexibility for certain commercial streets (which I find Albemarle Street to be one) and achieve high standards of design and preserve the historic environment.
16. In relation to conditions, I note that no non-standard conditions are proposed and I consider that none are necessary.

Conclusion

17. For the above reasons the appeal is allowed.

D.R. McCreery

INSPECTOR