



Appeal Decision

Site visit made on 22 October 2020

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: -6 November 2020

Appeal Ref: APP/X5990/W/20/3246841

Kish, 7-9 Kilburn High Road, London, NW6 5SD

- 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 M Nami Rad against the decision of the City of Westminster Council.
- The application Ref 19/06205/TCH, dated 5 August 2019, was refused by notice dated 17 October 2019.
- The development is described as use of two areas of the public highway for the placing of 8 tables and 32 chairs, and mobile planters with combined screens, each area measuring 3.8m x 4.6m in connection with the existing ground floor use.

Decision

1. The appeal is allowed and planning permission is granted for use of two areas of the public highway for the placing of 8 tables and 32 chairs, and mobile planters with combined screens, each area measuring 3.8m x 4.6m in connection with the existing ground floor use at Kish, 7-9 Kilburn High Road, London, NW6 5SD in accordance with the terms of the application, Ref 19/06205/TCH, dated 5 August 2019, subject to the conditions set out in the attached Schedule.

Preliminary matter

2. The appeal property is a ground floor restaurant that adjoins a wide footway, alongside the Kilburn High Road (A5). Under the terms of a planning permission granted by the Council¹, a specified number of tables and chairs for customers were allowed outside the restaurant on the footway. However, the appellant has placed planters with attached screens so as to surround the outside tables and chairs. The appellant, in effect, seeks to retain the current external arrangements. The tables, chairs, planters and screens were in place when I visited. I saw too that heaters were present, an indication that the external area was used during the autumn, at least.

Main issues

3. The main issues are the effect of the development on:
 - (a) the character and appearance of the host property and surrounding area, and
 - (b) on anti-social behaviour and crime.

¹ Ref 19/01301/TCH dated 30 April 2019

Reasons

Character and appearance

4. The appeal property is set within a mixed-use block comprised of commercial uses on the ground floor with residential flats above. The block is not of particular architectural merit, and is located alongside a main traffic thoroughfare, the A5.
5. The Council considers that the planters in tandem with the height of the screens means that it appears that a fully enclosed additional area has been added to the front of the building, particularly taking into account the canopies being extended over the area. As such, the Council takes the view that the external area has taken on a fully enclosed appearance adding a significant sense of excess bulk and massing to the front of the building, resembling that of an extension.
6. As well as its concerns as to the increased sense of enclosure to the front of the property, the Council also considers that the placing of the 22 planters and screens has resulted in excessive visual clutter in the street scene and on the footway, contrasting with the uncluttered shop fronts and footway of the adjoining commercial properties.
7. I note the Council's concerns, but consider them somewhat exaggerated, and I do not share them. I found the external furniture to be of an acceptable design and appearance, presenting a picture commonly seen throughout the commercial areas of our towns and cities throughout the United Kingdom.
8. This area alongside the A5 did not strike me as being of such high environmental quality as to be deserving of special protection, and in my view the external seating area, including planters and screens, did not impact adversely on the street scene. I note also that the adjoining local planning authority² did not object to the development on being consulted.
9. External seating areas such as this provide a service to customers who prefer to sit outside, especially in the pandemic period, when people may be understandably nervous as to eating indoors in a more confined space.
10. I did not perceive the external area in the same terms as the Council. To my mind it is plainly an outside seating area - the planters add colour, and the transparent screens provide protection from the elements to the customers.
11. I therefore conclude that the development would not prove harmful to the character and appearance of the host property or the surrounding area.
12. Accordingly, no conflict arises with those provisions of policies S25 and S28 of Westminster's City Plan and policies DES 1, DES 5, DES 7 and TACE 11 of the Council's Unitary Development Plan (UDP), directed in combination to achieving high quality design and to protecting the Council's area from inappropriate development.

Anti-social behaviour and crime

13. The Council's objection on this score is mainly based on the observations submitted by the Metropolitan Police in response to consultation on the

² The London borough of Camden

application. The Police are reported as saying that the planters reduce visibility and natural surveillance in the street, create loitering hotspots, storage space for weapons and drugs and that the screens can be used as weapons if dislodged.

14. As the experts in this field, the Police's comments are to be given serious consideration. It strikes me, however, that the present arrangements have been in place for some time, for over a year, and there is no evidence before me that the behavioural patterns subject of the Police's concerns have been experienced in practice.
15. Moreover, the area is likely to be under constant supervision and surveillance by the restaurant's staff when the restaurant is open, which would likely act as a deterrent to most potential miscreants.
16. Added to this is that the Council, should the appeal succeed, requires all the external furniture, which is portable, to be removed from the footway at night. This would considerably reduce the potential for crime and anti-social behaviour.
17. On balance, despite's the Police's concerns, I do not consider that the fears on crime and anti-social behaviour are entirely justified, particularly in circumstances where, for the reasons given below, I intend to impose conditions designed to control the conduct of the development.
18. Accordingly, no material conflict arises with those provisions of UDP policies DES 1 & TACE 11 directed to deterring the incidence of crime.

Conditions

19. The Council has suggested the imposition of several conditions, upon which the appellant has been given the opportunity to comment.
20. He is of the opinion that a temporary consent is not necessary since the highway authority raised no objection to the proposals during the course of the application and the free movement and enjoyment of pedestrians on the pavement remains unhindered with the furniture in situ.
21. I consider a time-restricted permission to be necessary for two main reasons. Firstly, by their very nature, the elements comprising the development are temporary or transient, and could physically deteriorate over time, thus affecting local appearance. Their condition and appearance should therefore be subject to periodic review.
22. Moreover, a further trial period is necessary to discover whether or not the Police's concerns are borne out in practice. Since I consider the Council's time-period to be too restrictive, I shall extend the Council's suggested period by a year.
23. I do not consider the Council's suggested 5th condition to be necessary, since it serves as a repetition of their suggested condition 1.
24. Although the style of wording of the other suggested conditions is to be modified, I shall impose all, for the same reasons as provided by the Council, and in the interests of deterring crime.

25. All other matters raised in the representations have been taken into account, but no other matter raised is of such strength or significance as to outweigh the considerations that led me to my conclusions.
26. Accordingly, for the reasons already provided, the appeal is allowed.

G Powys Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. TPD/TC/01, /02 & /03 and the OS location plan.
2. The tables, chairs, planters and screens hereby permitted shall be removed from the footway at night when the restaurant is closed for business.
3. The tables, chairs, planters and screens hereby permitted shall be permanently removed from the footway at the expiry of 2 years from the date of this permission.
4. The tables and chairs shall only be used by customers attending the restaurant at 7-9 Kilburn High Road.