



Appeal Decision

Site visit made on 17 July 2025

by **S Burch BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 August 2025

Appeal Ref: APP/H5960/W/25/3362601

266 Mitcham Road, Wandsworth, London, SW17 9NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Ms Agnieszka Niwinska of Smaczny Kasek-Tasty Bite against the decision of the Council of the London Borough of Wandsworth.
- The application Ref is 2024/3998.
- The development proposed is described as the 'construction of new powder coated metal framed double glazed outbuilding pergola structure to rear yard of premises, forming additional seating area to main restaurant, plus small addition to existing rear addition forming new customer WC.'

Decision

1. The appeal is dismissed insofar as it relates to the addition of an outbuilding pergola structure.
2. The appeal is allowed and planning permission is granted insofar as it relates to the construction of a small addition to the existing rear addition forming a new customer WC at 266 Mitcham Road, Wandsworth, London, SW17 9NT in accordance with the terms of the application, Ref: 2024/3998, and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

Applications for costs

3. An application for costs was made by Ms Agnieszka Niwinska of Smaczny Kasek-Tasty Bite against the Council. This application is the subject of a separate decision.

Preliminary Matters

4. The development appears to have already taken place in accordance with the submitted plans. As such I have determined the appeal on that basis.
5. The rear extension to form a customer WC is clearly severable from the outbuilding, as it is physically and functionally independent. Therefore, under section 79(1)(b) of the Town and Country Planning Act 1990, I have the power to issue a split decision in this case.

Main Issues

6. The Council have confirmed that they have no objection to the rear extension which forms a customer WC. I see no reason to disagree with this. The main issues are therefore the effect of the proposed outbuilding on:

- the living conditions of neighbouring occupiers, with particular regard to noise, disturbance and privacy; and
- the character and appearance of the area.

Reasons

Living conditions- noise and disturbance

7. The appeal site comprises a three-storey end of terrace property at the junction of Mitcham Road and Glasford Street. The ground floor of the main building is occupied by a restaurant, and it appears that the upper floors are in residential use. This arrangement appears to be common along this part of Mitcham Road whereby there are a range of shops, takeaways and salons etc at ground floor level and residential uses on upper floors. Glasford Street is predominantly residential in character.
8. The development effectively provides a dining space inside an outbuilding along Glasford Street. Customers would enter/exit the outbuilding through a door onto Glasford Street before dining inside the outbuilding, potentially for extended periods of time. Staff would also bring food to and from the main restaurant to the outbuilding.
9. This would likely result in an increase in noise and disturbance which would be out of character with the residential nature of Glasford Street. The increase in noise and disturbance would be readily discernible to the occupiers of several residential properties, including No's 1, 2, 4 6 and 8 Glasford Street and also the upper floor residential properties at No's 266 and 268 Mitcham Road, all of which sit in close proximity to the outbuilding. Whilst there may be some levels of background noise evident along Glasford Street from the shops along Mitcham Road, the scheme brings a noise source much closer to residential properties, thereby likely resulting in additional noise and disturbance. This increase in noise and disturbance would result in harm to the living conditions of neighbouring occupiers.
10. The size of the outbuilding limits the number of covers that can be accommodated inside it. However, as outlined in the appellants evidence, this is larger in floor area than the restaurant area at the front of the building. I am not satisfied that the size of the outbuilding and subsequently the number of covers it can accommodate would sufficiently minimise any increase in noise and disturbance.
11. Whilst the use of double glazing may mitigate noise from inside the outbuilding to a certain extent, the opening and closing of the door onto Glasford Street, which could be numerous times per hour as parties enter and leave, and staff entering and exiting with food and to clear tables etc would be readily apparent. Furthermore, at times when the outbuilding is occupied by numerous parties of customers, I am not persuaded that the double glazing would fully prevent the dispersal of noise from inside the structure.
12. The appellant outlines how the yard area could be used for the outdoor service of food and drinks through the placing of tables and chairs, without planning permission. They state that this represents a fallback position. However, it is unlikely these outdoor covers would be used during periods of inclement weather, or during hours of darkness, whereas the outbuilding would allow for outdoor dining all year round. On this basis, I do not consider this to be a comparable

fallback position as any impact relating to noise and disturbance would likely be lesser. I have afforded this consideration limited weight in favour of the appeal.

13. The evidence before me outlines how the opening hours of the restaurant are limited to 8am-8pm Monday to Friday and 8am-9pm Saturday and Sunday, and therefore the outbuilding would not be in use outside of these times. Whilst this would prevent additional noise and disturbance outside of these times, these hours still represent a significant proportion of the day. In any case, given the proximity to neighbours, there is potential for increased levels of noise and disturbance throughout the day whilst the restaurant is open, and the outbuilding is in use. I acknowledge that the appellant is willing to accept a later opening at 9am and an earlier closure at 6pm on Sunday, however I am not persuaded that this would sufficiently mitigate the harm identified above.
14. It is put forward that the Council's position is not based on any evidence. However, the Council have outlined their reasoning and substantiated their positioning as to why the proposed development would result in adverse levels of noise and disturbance. Based on their reasoning, it is not an unreasonable conclusion to make. The lack of comments from the Noise and Nuisance Team and neighbours does not indicate a lack of harm. Furthermore, I note one third party comment raised concerns regarding increased noise and disturbance.
15. For the reasons outlined above, the development, insofar as it relates to the outbuilding, results in unacceptable harm to the living conditions of the occupiers of nearby properties, with regards to increased noise and disturbance. This is contrary to Policies LP2, LP14 and LP45 of the Wandsworth Local Plan 2023-2038 (2023) (LP) which, amongst other matters, seek to ensure that development protects neighbouring amenity including minimising noise and disturbance. It is also contrary to Policy D14 of the London Plan (2021) which, amongst other things, seeks to mitigate and minimise adverse impacts of noise from new development.

Living conditions- privacy

16. The front elevation of the outbuilding, facing onto Glasford Street, is made up of glass panels. These glass panels face properties on the other side of Glasford Street, in particular the ground floor flat at No.2 which has two windows on its front elevation.
17. The proximity of the outbuilding to No. 2 would result in overlooking, and perceived overlooking, to the occupiers of this property as diners would be able to look into the windows. Furthermore, the outbuilding could be used by multiple parties at any one time, and consistently throughout the day. This would exacerbate any overlooking or perceived overlooking and provide the occupiers with little relief throughout the day.
18. Whilst similar separation distances are evident along Glasford Street between residential properties, I do not consider this relationship to be directly comparable as the intervisibility is between residential dwellings. The use of the outbuilding as a restaurant seating area means multiple parties could be using it at any one time, and throughout the day. Therefore, the loss of privacy would be readily apparent to residents of No.2.

19. The appellant suggests that anybody standing in the street outside the appeal building would, if the Council's argument is correct, be able to view the rooms of the units opposite. However, the outbuilding provides a formal space for people to dine, potentially for extended periods. In my view, it would be highly unusual for a person to stand on the street and look through windows for extended periods of time. I have afforded this consideration limited weight in favour of the appeal. Whilst it is inevitable that there may be some loss of privacy from passerby's, this would likely be momentarily and is not directly comparable to a formalised outdoor dining area opposite residential properties.
20. It is again put forward that the Council's position is not based on any evidence. However, the Council have outlined their reasoning and substantiated their positioning as to why the proposed development would result in a loss of privacy. Based on their reasoning, it is not an unreasonable conclusion to make.
21. I do not consider that the outbuilding results in a loss of privacy to the front windows of the first floor flat at 4 Glasford Street, given their positioning above the outbuilding, on the first floor.
22. For the reasons outlined above, the outbuilding results in unacceptable harm to the living conditions of the ground floor flat at 2 Glasford Street by way of loss of privacy. This is contrary to Policies LP2, LP14 and LP45 of the LP. Collectively, amongst other matters, these policies seek to ensure that development does not negatively impact surrounding residential uses.

Character and Appearance

23. Glasford Street is characterised by two storey Edwardian style terraced properties. The properties are generally similar in size and style and constructed largely of either brick or render. There is more variation in architectural style along Mitcham Road, with both three storey terraced properties and flat roofed buildings of varying height in the vicinity.
24. The evidence before me outlines how a large rear extension was recently approved and constructed at No. 268 Mitcham Road. Due to its scale and positioning, it is readily apparent when travelling along Glasford Street. I also note that there are other outbuildings to the rear of commercial units, some of which are evident from Glasford Street, as illustrated in the appellant's evidence.
25. The outbuilding is single storey in nature and relatively contemporary in appearance due to its design and use of glazing. The outbuilding is well designed and fits the context of the location at a transition point between commercial uses on Mitcham Road and the residential area of Glasford Street. In addition, it is viewed within the context of other outbuildings within the rear yard areas of properties along Mitcham Road. Given the above, I consider that the outbuilding relates positively to the character of the area.
26. The Council have raised concerns regarding the disconnect of the outbuilding to the main restaurant. They outline how to access the outbuilding from the restaurant both customers and employees have to walk along Glasford Street. However, in my view, it was readily apparent on my site visit that the outbuilding was a part of the restaurant. Furthermore, I have not been made aware of any policy requirement which requires an outdoor seating area to be physically connected to a main restaurant. I have afforded this limited weight in favour of the

Council's position regarding the effect on the character and appearance of the area.

27. For the reasons outlined above, the outbuilding has an acceptable impact on the character and appearance of the area. It would therefore be in accordance with Policy LP1 in this regard. This policy, amongst other matters, seeks to ensure that development relates positively to the prevailing character of an area.

Other Matters

28. The evidence outlines how the scheme does not affect access arrangements for emergency vehicles/services or emergency escape routes. It also outlines how existing parking arrangements are not affected. These are however considered neutral factors and do not weigh in favour or, nor against, the appeal.
29. I acknowledge that the outbuilding provides an outdoor dining environment, therefore attracting more customers, increasing footfall and enhancing business and employment opportunities. It may also help enhance public spaces, promote community engagement and possibly improve air quality through the use of climbing plants. Whilst these are considered important benefits, they do not outweigh the harm to the living conditions of neighbouring occupiers, as outlined above.

Conditions

30. As the construction of the rear extension to form a customer WC has already taken place, a condition relating to compliance with plans is not necessary. The Council suggested a condition relating to limited opening hours and the outbuilding. As I am dismissing the appeal insofar as it relates to the outbuilding, this condition is not necessary.

Conclusion

31. The appeal proposal includes two different elements. I have concluded that the outbuilding harms the living conditions of neighbouring occupiers by way of noise, disturbance and loss of privacy. However, I consider the rear extension to form a customer WC to be acceptable. The Council similarly have no objection to this element of the scheme.
32. Having had regard to the development plan as a whole, the Framework and all other matters raised, I dismiss the appeal in respect of the addition of an outbuilding. However, I allow the appeal in respect of the rear extension to form a customer WC.

S Burch

INSPECTOR