



Appeal Decision

Site visit made on 14 February 2025

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th October 2025

Appeal Ref: APP/K5030/W/24/3353479

1 Portsoken Pavilion, Aldgate Square, City of London, EC3N 1AF

- 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 Aldgate Tap Ltd against the decision of City of London Council.
 - The application Ref is 23/00255/FUL.
 - The development proposed is described as 'Retention of a change of use of the premises from the lawful permitted use as Class E(b) (restaurant) to Sui Generis (drinking establishment) use'.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 6 March 2025.

Decision

1. The appeal is allowed and planning permission is granted for the temporary change of use of the premises from restaurant/cafe (Class E(b)) to a drinking establishment (Sui Generis) at 1 Portsoken Pavilion, Aldgate Square, City of London EC3N 1AF in accordance with the terms of the application Ref: 23/00255/FUL, dated 10 March 2023, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in my formal decision above has been amended in the interests of brevity and precision. During my site visit I observed that the change of use has already occurred and that an ad hoc collection of furniture is used to awkwardly define the outside area. The Council and appellant have clarified that the appeal site encompasses the Portsoken Pavilion building, as shown on drawing 4-C-43130-01, and a section of Aldgate Square which is subject to a pavement license for outside seating.

Reasons

3. The main issue in this appeal is the effect of the proposed development on the amenity and character of Aldgate Square.
4. Aldgate Square is a relatively new public space constructed as part of the remodelling of the Aldgate gyratory system. It is an attractive urban focal point at the confluence of several busy streets and is centred on a lawned area and water art fountain enclosed by ornamental trees. The Portsoken Pavilion is a small but striking building that enhances the space. The square is flanked by the attractive St Botolph's Church and The Aldgate School.

5. It is apparent from the representations I have received that the square is a cherished local resource. This is because it provides a rare area of public open space in the City where young children can play and adults can sit and relax. The ability to undertake these activities is an important part of the amenity, character and function of the space.
6. The submissions from interested parties suggest the proposed change of use has negatively altered the character of the square. Their main concern is drinkers spilling out of the premises into the wider square, although some interested parties are also worried about the use of the outside space subject to the pavement license and the nature of a drinking establishment in this location.
7. In a general sense, the use of the Pavilion building as a drinking establishment would be in keeping with the vibrant mixed-use character of the City. However, I also share the view of interested parties that a drinking establishment with outdoor seating next to a play area, primary school and church has the potential for land use conflict. Moreover, use of the outside space has apparently resulted in some troubling behaviour with interested parties describing outside drinkers swearing, being drunk and acting 'loutishly'. On at least one occasion I am advised the police were called and children have also been verbally abused when using the water fountains even though these are an important feature of the square.
8. 'Spilling out' appears to be a particular problem as drinkers can dominate the square and in doing so reduce the space available for young children to play. This makes the square a less family friendly area and adversely affects its character and important function as an outdoor space for all members of the community to use. Moreover, adults wanting to relax in the square may be less inclined to do so if there are groups of drinkers spilling out into this space. Some representations indicated a feeling of being intimidated by drinkers spilling out into the square.
9. In respect of drinking establishments, there is some cross over between the planning and licensing regimes. Licensing has four objectives. These being the prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm. The appeal site has been granted a license to serve alcohol and these factors would have been considered. Nevertheless, planning is also concerned with the broad concept of amenity, and this includes character. Character involves the feel and function of a place.
10. A modest outside area used as an adjunct of the drinking establishment would not unduly impinge on the space available in the Square for play and relaxation and need not be out of character in the context of the surrounding busy environment. However, the associated activity requires careful management to ensure it does not harm the character and amenity of the square and the way it is enjoyed and used by others. To this end, the appellant has prepared an external management plan which they intend to follow as a condition of any planning permission. This would include the supervision of the outdoor seating space to ensure customers use it considerately, especially in warm weather. Use of the outside seating area as part of the drinking establishment may not harmfully impact the amenity of the square with a management plan in place. Indeed, the appellant has pointed to other examples where this approach is used¹.

¹ See 24/00236/FULL

11. However, the appeal site adjoins a cherished public square. As such, much will depend on the success and the robustness of the measures put in place in the management plan. It would therefore seem prudent that the proposed development, with an outside seating area, undergoes a trial run. The Planning Practice Guide (PPG)² explains that a temporary permission can be imposed in such circumstances. A period of 18 months would allow the impacts of the scheme with the management plan in place to be assessed whilst also not being too long a timeframe if harm is occurring.
12. The appellant suggests that the management plan could be reviewed every year for a three-year period as a means of negating a temporary permission. However, there would be no sanction after the three-year period if it was found to be ineffective. A temporary permission would therefore be a more robust solution, especially as the PPG explains that there is no presumption planning permission will be granted permanently at the end of the period. It is acknowledged that the licence would not be renewed if there were any substantial issues in relation to the four licensing objectives. However, and as already mentioned, I am concerned with the broad effect on amenity.
13. In respect of spilling out, from what I have read and observed, I am of the view that the appeal scheme has the potential to harmfully affect the amenity and function of the square if customers spill out into this public space. Indeed, this is a view shared by both the Council and appellant because a suite of planning conditions has been suggested to manage spilling out.
14. The first suggested condition is aimed at preventing the spilling out of customers from the appeal site before 17:30 Monday to Friday during the Aldgate School's term time. In effect, if this condition were imposed then customers would not be able to take food and drink purchased in open containers into the wider square during the prohibited periods. This restriction is aimed at preventing drinkers and pupils of The Aldgate School mixing in the square during the day in term times.
15. Whilst a helpful concession from the appellant, it cannot be assumed that only children attending Aldgate School wish to regularly use the open space and do so in term time and before 17:30. Parents with children may wish to visit the square outside of term time, on the weekend or in the early evening, especially if they do not have a garden at home. Local residents may also wish to visit the square during the evening and weekend to relax without it being dominated by drinkers. As such, it would not be sufficient to only restrict spilling out in the way suggested.
16. Instead, I am of the view there should be no spilling out before 19:00 Monday to Sunday throughout the year. This would prevent drinkers dominating the square other than later into the evening, when young children are less likely to be using the space. Such a variation to the suggested condition is necessary as the proposal would otherwise have been dismissed given the impact spilling out would have on the character and amenity of the square.
17. To ensure the condition is enforceable, it would be necessary to ensure the outdoor seating area is properly demarcated in a manner approved by the Council, as otherwise it would be unclear whether customers were spilling out or not. This would also address concerns that the current means of delineating the outside seating area is harming the visual amenity of the Pavilion and causing an

² Paragraph: 014 Reference ID: 21a-014-20140306

obstruction. The need to properly control spilling out also adds further weight to the necessity of a trial run.

18. In addition, a necessary condition has been suggested to ensure the use of the outside area ceases if the pavement license is revoked. Furthermore, a condition can be imposed to control music. With these measures in place, I am satisfied the amenity and character of the square would be safeguarded, as its important function as a space for young children to play and others to relax would endure during the day and into the early evening.
19. In conclusion, with appropriately worded conditions the proposal would likely preserve the amenity and character of Aldgate Square and therefore a conflict with Policy DM3.5 of the City of London Local Plan and draft Policy CV5³ of the emerging City Plan (the latter referred to as a material consideration) would not occur. These extant and emerging policies seek to secure development which would not unacceptably impact environmental amenity.

Other Matters

20. Some interested parties are concerned that the proposal would result in the loss of a community facility, namely the café that previously functioned from the Pavilion. I have not been provided with substantive evidence to indicate that a condition was imposed on the original permission granting the Pavilion as a café and for no other purposes. As such, a change of use away from a café but within the Class E use class could have occurred without planning permission. In any event, even as a drinking establishment, the appeal site would provide space for community groups to meet and socialise. In this respect, I note that a chess club meets there, and school groups have also visited during the day. I therefore share the view of the Council and appellant that a harmful loss of a community use has not occurred.
21. Having regard to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas Act) 1990 and the relevant sections of the National Planning Policy Framework, I am satisfied the proposed change of use would preserve the setting of listed buildings and the character, appearance and significance of the Conservation Area.

Conditions

22. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. I requested the views of the Council and appellant regarding the imposition of more onerous conditions and have taken their responses into account. I have already outlined why conditions are required to control the activity associated with the change of use. In addition to these, it is necessary, in the interests of safeguarding the amenity of neighbours and the safe operation of adjacent streets, to impose conditions limiting promoted events and servicing to night-time, to ensure refuse is collected and stored and extraction equipment properly cleared and maintained. I understand that the provision of public toilets was an important element of the original design concept of the Pavilion and Square. It is therefore necessary to ensure this endures. A commencement condition is unnecessary as the proposal has started.

³ The Council has erroneously referred to Policy CV4 in the reason for refusal – this relates to hotels

Conclusion

23. The appeal scheme, albeit approved temporarily for a trial run, would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal is allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be for a limited period of 18 months starting on the 6 March 2025. Thereafter, the development hereby permitted shall be discontinued.
- 2) During operational hours customers who have purchased food and drink in open containers shall not be allowed to spill-out from the Pavilion building unless one of the following exceptions apply:
 - (i) There is an area agreed and provided specifically for that purpose under a Pavement Licence issued in accordance with Part 1, Business and Planning Act 2020 (As Amended); or
 - (ii) There is an area agreed and provided specifically for that purpose under a Tables and Chairs Licence issued in accordance with Part VIIA, Section 115E(1)(b)(i), The Highways Act 1980; or
 - (iii) In the case of (i) and (ii) an equivalent licence issued under any provisions in any statutory instrument revoking and re-enacting the above Acts with or without modification.

Where an appropriate licence is in place, as outlined at (i), (ii) and (iii) above, the spilling-out of customers before 19:00 shall be specifically limited to the approved licenced area(s) only.

- 3) The area agreed for spilling-out granted under a Pavement Licence, a Tables and Chairs Licence or an equivalent licence issued under any provisions in any statutory instrument revoking and re-enacting the above Acts with or without modification shall:
 - i) Cease and all associated paraphernalia shall be removed within 7 days of a failure to comply with Condition 2 or in the event that an application to remove/modify Condition 2 is refused.
 - ii) In the event that the developer appeals against the Local Planning Authority's refusal to remove/modify the condition, the agreed area outside the building shall cease pending the outcome of any appeal. The agreed area outside of the building for spilling-out shall not resume until a decision to allow the removal/modification of the condition has been made by the Secretary of State.
- 4) The drinking establishment premises hereby approved, and any associated spilling-out of customers into the external area, including the wider Aldgate Square (where permitted under the terms of Conditions 2 and 3 attached to this permission) shall be operated in accordance with "The Aldgate Tap: External Management Plan" received on 19 November 2023 for the life of the use.
- 5) No live or recorded music shall be played that can be heard outside the pavilion building. Except in the case of an emergency, the external doors to the premises shall be kept closed at all times when live or recorded music is being played.
- 6) No amplified or other music shall be played in the premises between the hours of 23:00 on one day and 08:00 on the next day.

- 7) There shall be no promoted events on the premises. A promoted event for this purpose, is an event involving music and dancing where the musical entertainment is provided at any time between 23:00 and 07:00 by a disc jockey or disc jockeys one or some of whom are not employees of the premises licence holder and the event is promoted to the general public.
- 8) No servicing of the premises shall be carried out between the hours of 23:00 on one day and 07:00 on the following day from Monday to Saturday and between 23:00 on Saturday and 07:00 on the following Monday and on Bank Holidays. Servicing includes the loading and unloading of goods from vehicles and putting rubbish outside the building.
- 9) All parts of the existing and any future ventilation and extraction equipment including the odour control systems installed shall be cleaned, serviced and maintained in accordance with Section 5 of 'Control of Odour & Noise from Commercial Kitchen Extract Systems' dated September 2018 by EMAQ+ (or any subsequent updated version). A record of all such cleaning, servicing and maintenance shall be maintained and kept on site and upon request provided to the Local Planning Authority to demonstrate compliance.
- 10) The existing refuse collection and storage facilities within the building shall be used by the operators of the Drinking Establishment (Sui Generis) use hereby approved and no waste shall be placed on the public highway.
- 11) The development shall not be carried out other than in accordance with the following approved drawings and particulars or as approved under conditions of this planning permission: Drawing nos. 4-C-43130 -01, 4-C-43133 -01; Unnumbered - External Area Extent; Site Location Plan (EGL542149). Documents: The Aldgate Tap: External Management Plan rec'd 19.11. 2023
- 12) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) Within 3 months of the date of this Decision the following details shall be submitted for the written approval of the Local Planning Authority:
 - (a) evidence that during opening hours the premises is part of the City's Community Toilet Scheme (CTS) and includes adequate signage advertising this or, where such membership has not been granted, details of the application and/or reasons for rejection;
 - (b) details of how the external area of the premises subject to a pavement licence will be demarcated and a timetable for implementing this.
 - ii) If within 11 months of the date of this decision the Local Planning Authority refuse to approve the above, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
 - iv) the above shall have been carried out and completed

- 13) The toilets in the Pavilion building shall be available for use by members of the general public at all times when the commercial use is in operation.

End of Schedule