
Appeal Decision

Site visit made on 28 October 2014

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 13 November 2014

Appeal Ref: APP/X5990/A/14/2224224

"Al Hamra Restaurant", 31-33 Shepherd Market, London, W1J 7PT.

- 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 Moutaz Aladas against the decision of City of Westminster Council.
 - The application Ref. 14/04747/Ful, dated 19 May 2014, was refused by notice dated 7 August 2014.
 - The development proposed is the erection of a plastic enclosure for outside seating.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council described the proposal on the decision notice as "erection of plastic enclosure on the highway in front of the building to surround tables and chairs to be used for shisha-smoking purposes". This reflects the proposed use as set out in the Design and Access Statement accompanying the application. However, the Council goes on to indicate that under the Health Act (2006) it may not be lawful to smoke in such an enclosed space as formed by the plastic enclosure. The Council also advises that shisha-smoking may involve a material change of use of the overall premises. These aspects are beyond the scope of this application; therefore I have considered the proposal as per the description stated in the planning application and where the accompanying plans show that it is proposed that the plastic enclosure would envelop tables and chairs on a pavement outside a restaurant and to the degree indicated on the plans.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area, including the Mayfair Conservation Area;
 - The living conditions of people living close to the site.

Reasons

4. The site comprises an existing restaurant which is located on the corner of two streets in Shepherd Market, a pedestrian area serving shops, cafés and eating establishments. The appellant says that the Council has previously granted

consent for the use of the adjoining part of the highway for 24 chairs and 12 tables.

5. It is proposed to erect a plastic enclosure outside a side door of the existing restaurant. The plans indicate that it would have dimensions of 6.85m long by 2.1m wide and 2.28m high and although the submitted details are sketchy it appears to me that the structure would be formed from metal poles and a 'suspended fabric sheet'. It is intended that the enclosure would be in use until midnight each day.

Effect on character and appearance

6. Shepherd Market displays the character of a bustling commercial area where people shop and relax and at my site visit I saw many examples of outside tables and chairs for cafés and restaurants, including purpose built wooden enclosures on the pavement. The external elevations of the "Al Hamra" café/restaurant also contribute to this attractive character which forms part of the Mayfair Conservation Area.
7. Although the restaurant had a few 'alfresco' tables and chairs outside on the pavement at the time of my site visit, I am concerned that the proposed plastic fabric enclosure would appear as an inappropriate 'structure' which would be at odds with the otherwise attractive street scene. As far as I can judge from the limited information submitted about the proposed materials, I consider that the enclosure, which appears to be more than a simple awning, would cover up part of the architectural form of the restaurant but would not be an attractive architectural feature in its own right.
8. Although the structure may only be intended for a temporary period, and its presence could be time limited to avoid harm caused by the deterioration of the plastic fabric, it has not been demonstrated that the proposed enclosure would preserve or enhance the character or appearance of the Conservation Area. It is more likely that it would materially harm it. As such, I find under this issue that the proposal conflicts with the requirements of saved policies DES5 & DES9 of the Council's Unitary Development Plan (2007) (UDP).

Effect on living conditions

9. It is clear from the application form and Design and Access Statement, that it is intended that the enclosure would protect users of the outdoor tables and chairs from the elements till late in the evening and 2300 and midnight have been suggested as closing times. It also appeared to me at my site visit, that there were residential properties with people living close-by the site including above commercial premises.
10. Some degree of noise and disturbance can be associated with the bustle of a mixed use commercial area and in particular people coming and going from the restaurant. However, the enclosure would extend the time that people could socialise 'outside' of the premises till late in the evening but it has not been demonstrated that the fabric cover would have sufficient noise limiting qualities to reasonably contain any noise even up to 11pm – a 'closing time' restriction set out in the saved Policy TACE of the UDP. This adds to my concern about the erection of the enclosure and on the limited information available to me I cannot say that the proposal satisfies the requirements of saved policy ENV6 of

the UDP in respect of ensuring that the development does not give rise to noise disturbance.

Other matters

11. The Council also advises in a reason for refusal that the enclosure would result in it being more difficult to clean the footpath. Although various policies in the development plan are referred to, these in the main do not seek to ensure that 'ease of cleaning' of the highway is a material planning consideration, and the policies appear to be more concerned with pedestrian movement and safety. I suspect that the effect of the proposed enclosure of the public highway is governed by other legislation and I do not intend to place much weight on this aspect of street cleaning in the planning balance.
12. Similarly, the Council has added a reason for refusal which alleges that the use of the enclosure for shisha-smoking may result in a material change of use of the premises. However, as I have explained in the preliminary matters in paragraph 2 above, I will only consider the proposal as the erection of the plastic enclosure over outside seating in conjunction with the restaurant and that this proposal does not imply any other material change of use.

Planning balance

13. Bringing together my conclusions on the main issues, I have found that on the limited information available on the design of the plastic enclosure, that it would be likely to harm the character and appearance of this part of the Mayfair Conservation Area and would not preserve or enhance it. Although I find this harm to the heritage asset to be less than substantial, it would be material and I do not consider that the enclosure of the seating area provides significant public benefits, or that its absence would threaten the viability of the restaurant, to justify an exceptional case in accordance with the national Framework¹. Further, my concern about the enclosure resulting in noise and disturbance late at night adds to the negative factors inherent with the proposal. Overall, I conclude that the proposal does not accord with the development plan.
14. I appreciate that the appellant considers that the proposal would accommodate people who may live locally and who would wish to use the facility and the Framework encourages vitality and a diverse range of facilities but these factors do not outweigh the harm that I have identified and the conflict with Framework when read as a whole.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

¹ The National Planning Policy Framework(2012) – see paragraph 134.

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