

# COMMITTEE REPORT

**Please Index As**

**File Number**

**Committee Report**

**Part 1**

**Part 2**

**Part 3**

ROYAL BOROUGH OF KENSINGTON & CHELSEA

REPORT BY THE EXECUTIVE DIRECTOR, PLANNING & CONSERVATION

PLANNING & CONSERVATION COMMITTEE  
PLANNING SERVICES COMMITTEE  
DELEGATED

APP NO. PP/03/02569  
AGENDA ITEM NO.

ADDRESS/SUBJECT OF REPORT:

126/128 Notting  
Hill Gate, London,  
W11 3QG

APPLICATION DATED 03/12/2003

APPLICATION REVISED

APPLICATION COMPLETE 08/12/2003

APPLICANT/AGENT ADDRESS:

Camilla Yerbury,  
RPS.,  
Fairwater House,  
1 High Street,  
Wroughton, Swindon,  
SN4 9JX

CONS. AREA N/A CAPS No

ARTICLE '4' Yes WARD PEA

LISTED BUILDING No

HBMC DIRECTION

CONSULTED OBJ.

SUPPORT PET.

RECOMMENDED PROPOSAL:

RBK& C DRAWING NO(S):

RECOMMENDED DECISION:

CONDITIONS/REASONS FOR THE IMPOSITION OF CONDITIONS:

**ROYAL BOROUGH OF KENSINGTON & CHELSEA  
REPORT BY EXECUTIVE DIRECTOR, PLANNING & CONSERVATION**

**APP NO. PP/03/02569/MNW  
PLANNING SERVICES COMMITTEE 03/02/2004  
AGENDA ITEM NO. 07**

**SITE ADDRESS**

**126/128 Notting Hill  
Gate, London, W11 3QG**

**APPLICATION DATED** 03/12/2003

**APPLICATION COMPLETE** 08/12/2003

**APPLICATION REVISED**

N/A APPROVED BY  
PLANNING SERVICES CTTEE  
1 3 JUL 2004  
CONSENT REF.....

**APPLICANT/AGENT ADDRESS**

**Camilla Yerbury, RPS.,  
Fairwater House,  
1 High Street, Wroughton,  
Swindon,  
SN4 9JX**

**DEFERRED**

**LISTED BUILDING** No **CONS. AREA** N/A **WARD** Pembridge

**CAPS** No **ENGLISH HERITAGE** N/A **ART '4'** Yes

**CONSULTED** 30 **OBJECTIONS** 1 **SUPPORT** 0 **PETITION** 0

**Applicant** Mitchell & Butlers Retail Ltd.

**PROPOSAL:** Creation of external seating area comprising 5 tables and 20 chairs with 2 portable planters and 2 retaining ropes associated with existing A3 food and drink use (variation of planning permission ref. PP/03/1169 dated 1st August 2003).

**RBK&C Drawing No(s):** PP/03/02569

**Applicant's Drawing No(s):** 2 A3 plans titled 'external seating area' and 'footway zones' dated 5th December 2003.

**RECOMMENDED DECISION:** Grant planning permission

**CONDITIONS/REASONS FOR THE IMPOSITION OF CONDITIONS:**

1. **The use of the forecourt and the placing of all tables, chairs and plants hereby permitted shall be retained for a limited period only until 01/10/2004 on or before which date the use of the forecourt shall be discontinued.**  
*Reason: Permission for a limited period will enable the authority to reassess the development in the light of the experience of the use.*
  
2. **This permission shall be personal to All-Bar-One and shall not enure for the benefit of the land. (C006)**  
*Reason: In granting this permission the Local Planning Authority has had regard to the special circumstances of the case/applicant, and considers that use otherwise than by All-Bar-One would have had different implications, and would be likely to have resulted in planning permission being refused. (R006)*
  
3. **No more than 5 tables and 20 chairs shall be positioned in front of the premises at any one time, and these tables and chairs shall be positioned within 2000 mm of the shopfront and used only in conjunction with the bar use operating within Class A3 of the Town and Country Planning (Use Classes) Order 1987.**  
*Reason - To prevent further obstruction of the public highway and to safeguard the amenities of the area.*
  
4. **The forecourt shall not be used as a customer seating area between 23:00 hours and 11:00 hours the following day, at no time other than between 11.00 hours and 23.00 hours shall there be tables and chairs or any plants in front of the premises.**  
*Reason: To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*
  
5. **There shall be no planters other than the two planters shown on drawing received 5th December 2003 at the front of the premises at any time.**  
*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

6. **The pavement area in front of the premises, to a distance of 2m from the shopfront, shall be inspected, swept and cleaned regularly so as to be free of litter at all times.**  
*Reason - To maintain the amenity of the shopping parade.*

**INFORMATIVES**

1. I09  
2. I25

## **1.0 THE SITE**

- 1.1 No.126-128 is located on the north side of Notting Hill Gate. It is a ground floor unit in use as a Class A3 and is currently occupied by "All Bar One".
- 1.2 The premises is located beneath a block of residential flats known as Ivy Lodge.
- 1.3 The premises are situated within the core frontage of the Notting Hill Gate Principal Shopping Centre.

## **2.0 DESCRIPTION OF PROPOSAL**

- 2.1 This application proposes to vary the conditions attached to the renewal of planning permission for 3 tables and 12 chairs outside the premises which was granted on 1st August 2003 (PP/03/1169). This permission is temporary until 23<sup>rd</sup> July 2004.
- 2.2 Condition 3 of this permission stated;  
"No more than 3 tables and 12 chairs shall be positioned in front of the premises at any one time, and these tables and chairs shall be positioned within 2000mm of the shopfront and used only in conjunction with the public house operating within Class A3 of the Town and Country Planning (Use Classes) Order 1987  
*Reason - To prevent further obstruction of the public highway and to safeguard the amenities of the area."*
- 2.3 Condition 4 of this permission stated;  
"The forecourt shall not be used as a customer seating area between 23.00 hours and 18.00 hours the following day, at no time other than between 18.00 hours and 23.00 hours shall there be tables and chairs in front of the premises.  
*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity."*
- 2.4 Condition 5 of this permission stated;  
"There shall be no planters other than the two planters shown on drawing Option A received 28 May 2003, or means of enclosure at the front of the premises at any time.  
*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity."*
- 2.5 This application proposes 5 tables and 20 chairs with retaining ropes to be positioned outside the premises from 11.00 hours until 23.00 hours.

### **3.0 RELEVANT PLANNING HISTORY**

- 3.1 Planning permission was originally granted for the creation of external seating area and installation of new shop front on 17th June 2002 (PP/01/2375). The tables and chairs were granted for a temporary period of one year, the number of tables were limited to 3 and chairs to 12, and the hours of use were restricted to evening use only from 18.00 hours until 23.00 hours.
- 3.2 It should also be noted that planning permission was granted on 29th September 1997 for the change of use of to Class A3 This permission included a condition which stated that "no tables and chairs shall be sited on the forecourt area in front of no.s 126 and 128 Notting Hill Gate". Planning permission was refused on the 18th June 1999 for the removal of this condition and for the placing of 5 tables and 20 chairs. The reason for refusal was;  
"The placing of tables and chairs on the forecourt would generate unacceptable pavement clutter on this otherwise open pavement space to the detriment of visual amenity, and would be prejudicial to environmental improvement being proposed in this locality".

### **4.0 PLANNING CONSIDERATIONS**

- 4.1 The main considerations in this case are the impact of the proposed additional tables and chairs with the retaining ropes and the additional hours of use during the daytime on the free flow of pedestrian traffic on the public highway, and the effect on the amenities of occupiers of neighbouring residential properties.
- 4.2 The relevant Policies of the Unitary Development Plan include CD27, CD40 and TR3.
- 4.3 The applicant has applied to extend the hours of the seating area to include daytime use from 11.00 hours as well as the existing evening use so to be in line with the hours of the A3 use. The building has a fixed canopy which provides cover for pedestrians walking along the footway. Policy TR3 of the Unitary Development Plan is "to maintain, and improve footways to provide a safe and attractive environment for pedestrians". The public pavement is well used by pedestrians, and when the conditions were attached to the original application for tables and chairs in June 2002, the Planning Services Committee was concerned that the proposed seating would block pedestrian movement and would generally prevent pedestrians walking under the covered canopy. The overhanging canopy is provided largely in order to shelter pedestrians, and the placing of tables and chairs on the pavement would result in some pedestrians not benefiting from this covered canopy. This is a Principal Shopping Centre and to ensure that there was no obstruction to pedestrian passage along the shopping frontage during the day time, the original planning permission in 2002 (and its renewal in 2003) restricted the hours of operation to evening only (from 18.00 hours to 23.00 hours).

- 4.4 The potential restrictions to pedestrian movement and the obstruction of the pavement under the canopy remain as valid planning considerations in accordance Policy TR3 and were the main reason for which the time period was limited in the original permission to evenings only.
- 4.5 The applicant wishes to increase the number of tables to 5 and the number of chairs to 20. Whilst the increased number of tables and chairs would not extend any further out from the shop frontage, they would extend across the whole width of the shop and would necessitate the use of retaining ropes. This would restrict pedestrian movement for an additional 3.5 metres of pavement and the intention of limiting the numbers was to limit the amount of pavement obstructed. In addition, the restriction of the number of tables and chairs helps to protect the amenities of the area, in particularly the residential amenity of those living immediately above the unit in accordance with Policy CD40 which is to resist proposals where the noise generated by the use or activity would cause material disturbance to occupiers of surrounding properties. These are considered to be valid planning concerns for the restriction on the numbers of tables and chairs.
- 4.6 In response to this proposal to increase the numbers of tables and chairs and the hours of use, it is considered that the experience of the last eighteen months since permission was originally granted in summer 2002 should be reviewed, in particular whether the current tables and chairs have generated any complaints. There have been no planning enforcement complaints with regard to the tables and chairs and only one objection from Councillor Campion in relation to the renewal of this permission. However, it would appear during the summer 2003 there were occasions when tables and chairs were in place at times during the daytime, and in relation to the previous application it was noted that at the time of a site inspection on the 7th July, 2003 at 3.30pm there were four tables and sixteen chairs in place in front of the unit. This was in breach of the conditions relating to the number of tables and chairs and hours of use.
- 4.7 The Director of Transportation and Highways has no objection to the proposed increase in the number of tables and chairs or hours of operation. He states;
- "The footway at this point is over 9m wide, and there is over 6.5m clear between the shop front and any obstruction to clear passage. There are no impacts on pedestrians from the proposal, as this area will be well able to service the existing flow. Extending the hours of operation would not appear to have any negative pedestrian flow effects, as permission currently existing from 18 00 during the evening peak, and no complaints have been received."
- 4.8 There have been no complaints received by the Highways Enforcement with regard to the premises.



- 4.9 The Director of Environmental Services has confirmed that no noise and nuisance complaints have been received and that there are no objections to the proposal. There have been no objections to the proposal by the residents of the flats above the unit. In addition, there have not been any complaints to Environmental Health with regard to the licence of the premises. The Metropolitan Police have also verbally confirmed that they have not experienced any problems in connection with tables and chairs outside the premises and would not have any objection to the proposed increase in the numbers of tables and chairs.
- 4.10 Based on the above evidence, it can be concluded that the tables and chairs at the above premises do not appear to have been harmful to the amenity of the area. Whilst the planning conditions relating to the numbers and hours of operation were attached to the original permission for sound planning reasons, namely to ensure that there was no obstruction to pedestrian passage during the daytime and to safeguard the amenities of the area, it is considered that it is now evident that these tables and chairs have been operating for the last eighteen months without generating any complaints or causing harm to the amenities of the area in terms of noise or obstruction to pedestrian movement.
- 4.11 It is considered that the proposed daytime use and additional 2 tables and 8 chairs would not result in any significant additional obstruction to pedestrian movement or noise or nuisance. On balance, it is therefore recommended that permission should be granted for daytime use and for 5 tables and 20 chairs with retaining ropes. It is recommended that this is granted on a temporary basis until 1st October 2004. This will enable a whole summer trial period for the additional hours of operation and additional numbers of tables and chairs. It is considered that this would be sufficient to enable further consideration in the light of this added experience.

## **5.0 PUBLIC CONSULTATION**

- 5.1 Occupiers of twenty-nine neighbouring properties in Notting Hill Gate and Ivy Lodge were notified of this application. No response received.
- 5.2 An objection to this application has been received from Councillor Campion. He comments;

"The previous permission gave a limited period extension within limited seating in order to test the ability of the franchisee to maintain it properly. Since then, apart from the fact that they continued for a time to have more than the specified number of tables and chairs, the use has not been much in evidence since so there has so far been inadequate chance to assess whether the use has been acceptable.

It is totally unacceptable, in my view, for part of the public pavement to be roped off, as applied for by Mitchell Butchers Retail Ltd. The premises internally is quite large enough to hold their present clientele without such an extension of further A3 use spreading out on to the

public pavement".

- 5.3 It is recognized that the tables and chairs have not been in place during the winter months. However, permission was originally granted in July 2002 and Planning Services Committee considered the renewal of permission in July 2003 (decision granted on 1st August 2003). The applicant has stated that the tables and chairs have been in use for the summer months last year until October 2003. There has now been a full summer of use which it is considered is sufficient to consider whether the tables and chairs have resulted in any harm to the amenity of the area. The retaining ropes are proposed in order to prevent the tables and chairs sprawling over a larger area of pavement, than that which has been approved.

## **6.0 RECOMMENDATION**

- 6.1 Grant Planning Permission.

**M.J. FRENCH  
EXECUTIVE DIRECTOR, PLANNING AND CONSERVATION**

### **List of Background Papers:**

**The contents of file PP/03/02569 save for exempt or confidential information in accordance with the Local Government (Access to Information) Act 1985.**

**Report Prepared By: SG  
Report Approved By: DT/LAWJ  
Date Report Approved: 21/01/2004**

**PSC02/04/SG.REP**

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

WJDN

**PLANNING SERVICES COMMITTEE 17th MARCH 2004**

**ADDENDUM REPORT BY THE EXECUTIVE DIRECTOR, PLANNING  
AND CONSERVATION**

**126/8 NOTTINGHILL GATE, LONDON W11**

**APPLICATION REF: PP/03/02569**

This addendum report relates to the attached report in respect of an application for the creation of external seating area comprising 5 tables and 20 chairs associated with existing Class A3 food and drink use (variation of conditions attached to planning permission ref. PP/03/1169 dated 1st ~~March~~ <sup>Aug.</sup> 2003).

**FOR DECISION**

**1.0 BACKGROUND**

- 1.1 At the meeting of 3rd February 2004 the Planning Services Committee considered the application for the creation of an external seating area comprising 5 tables and 20 chairs (variation of planning permission ref. PP/03/1169 dated 1st August 2003). The application proposed variations to three conditions to enable an increase in the numbers of tables and chairs (Condition 3), to increase the hours of operation from 11.00 hours until 23.00 hours (Condition 4) and to include retaining ropes (Condition 5).
- 1.2 The Committee deferred this application to enable the applicant to consider amending the proposal to omit some of the proposed variations to the August 2003 permission.

**2.0 FURTHER CONSIDERATIONS**

- 2.1 The proposed retaining ropes have now been omitted from the application.
- 2.2 It is still proposed to vary condition 3 to increase the number of tables and chairs from 3 to 5 tables and from 12 to 20 chairs and to vary condition 4 to increase the hours of operation from 18.00 to 23.00 hours to 11.00 to 23.00 hours.
- 2.3 An additional letter has been received from the Estate Manager of Mitchell Butlers Retail Ltd in which he states that senior management will ensure that the premises are policed more closely in future and confirms that if planning permission is granted, he

would apply for a Highways Licence.

- 2.4 It should be noted that failure to obtain a Highways Licence would not be grounds for refusing planning permission. Government guidance states that planning legislation should not be used to secure objectives achievable under other legislation. It is recommended that an informative is added to any planning permission to remind the applicant that the Council has powers of enforcement under the Highways Act 1980.

### **3.0 RECOMMENDATION**

- 3.1 Grant planning permission.

**RBK&C Drawing No(s) PP/03/2569/A.**

**Applicant's Drawing No(s) un-numbered titled "external seating area" dated 26/02/2004.**

Michael J French,  
Executive Director, Planning and Conservation.

#### **Background papers used in the preparation of this Report:**

The contents of file PP/03/2569.

#### **Officer Contact**

Miss Tracey Rust, Planning Information Office, Town Hall

1. **The use of the forecourt and the placing of all tables, chairs and plants hereby permitted shall be retained for a limited period only until 01/10/2004 on or before which date the use of the forecourt shall be discontinued.**

*Reason: Permission for a limited period will enable the authority to reassess the development in the light of the experience of the use.*

2. **This permission shall be personal to All-Bar-One and shall not enure for the benefit of the land. (C006)**

*Reason - In granting this permission the Local Planning Authority has had regard to the special circumstances of the case/applicant, and considers that use otherwise than by All-Bar-One would have had different implications, and would be likely to have resulted in planning permission being refused. (R006)*

- 3. No more than 5 tables and 20 chairs shall be positioned in front of the premises at any one time, and these tables and chairs shall be positioned within 2000 mm of the shopfront and used only in conjunction with the bar use house operating within Class A3 of the Town and Country Planning (Use Classes) Order 1987.**

*Reason - To prevent further obstruction of the public highway and to safeguard the amenities of the area.*

- 4. The forecourt shall not be used as a customer seating area between 23:00 hours and 11:00 hours the following day, at no time other than between 11.00 hours and 23.00 hours shall there be tables and chairs or any plants in front of the premises.**

*Reason: To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

- 5. The pavement area in front of the premises, to a distance of 2m from the shopfront, shall be inspected, swept and cleaned regularly so as to be free of litter at all times.**

*Reason - To maintain the amenity of the shopping parade.*

- 6. There shall be no planters other than the two planters shown on the approved drawing dated 26/02/2004 or means of enclosure at the front of the premises at any time.**

*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

### **INFORMATIVES(S)**

1. Before placing any structures, including tables, chairs, or advertisements, on the public highway, you are advised to consult the Directorate of Transportation and Highways, Room 230, Town Hall, Hornton Street W8 7NX (020-7361-3628) regarding consent under the Highways Act which would be required. It is noted that tables and chairs have been placed on the highway without any such consent and you are reminded that the Council has powers of enforcement under the Highways Act 1980.
2. Your attention is drawn to the Conditions of this Permission and to the Council's powers of enforcement, including the power to serve a Breach of Condition Notice under the Town and Country Planning Act 1990, as amended. (I10)

Attachment

AE

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**PLANNING SERVICES COMMITTEE 20<sup>th</sup> APRIL 2004**

**ADDENDUM REPORT BY THE EXECUTIVE DIRECTOR, PLANNING  
AND CONSERVATION**

**126/8 NOTTINGHILL GATE, LONDON W11**

**APPLICATION REF: PP/03/02569**

*Agenda Item*

This addendum report relates to the attached report in respect of an application for the creation of external seating area comprising 5 tables and 20 chairs associated with existing Class A3 food and drink use (variation of conditions attached to planning permission ref. PP/03/1169 dated 1<sup>st</sup> August 2003).

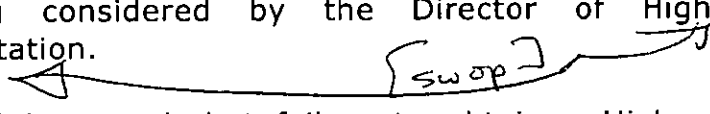
**FOR DECISION**

**1.0 BACKGROUND**

- 1.1 At the meeting of 3<sup>rd</sup> February 2004 the Planning Services Committee considered the application for the creation of an external seating area comprising 5 tables and 20 chairs (variation of planning permission ref. PP/03/1169 dated 1<sup>st</sup> August 2003). The application proposed variations to three conditions to enable an increase in the numbers of tables and chairs (Condition 3), to increase the hours of operation from 11.00 hours until 23.00 hours (Condition 4) and to include retaining ropes (Condition 5).
- 1.2 The Committee deferred this application to enable the applicant to consider amending the proposal to omit some of the proposed variations to the August 2003 permission.

**2.0 FURTHER CONSIDERATIONS**

- 2.1 The proposed retaining ropes have now been omitted from the application.
- 2.2 It is still proposed to vary condition 3 to increase the number of tables and chairs from 3 to 5 tables and from 12 to 20 chairs and to vary condition 4 to increase the hours of operation from 18.00 to 23.00 hours to 11.00 to 23.00 hours.

- 2.3 An additional letter has been received from the Estate Manager of Mitchell Butlers Retail Ltd in which he states that senior management will ensure that the premises are policed more closely in future.
- 2.4 In addition, a letter has been received from the agent for the application in which she acknowledges that the lack of a Highways Licence to accompany the outstanding planning consent was a "regrettable omission". However, she stresses that the tables and chairs are not currently in place.
- 2.5 A Highways Licence has now been submitted to the Council and is being considered by the Director of Highways and Transportation.
- 2.4 It should be noted that failure to obtain a Highways Licence would not be grounds for refusing planning permission. Government guidance states that planning legislation should not be used to secure objectives achievable under other legislation. It is recommended that an informative is added to any planning permission to remind the applicant that the Council has powers of enforcement under the Highways Act 1980.
- 

### **3.0 PUBLIC CONSULTATION**

- 3.1 Councillor Campion has requested that Condition 5 is reworded to omit the word "regularly" to ensure that it is clear that the overriding requirement of the condition is for the area to be cleaned and swept so that it is free of litter rather than simply to swept and cleaned regularly. In addition, he suggests that 2 metres of pavement is more that is required and that the chairs should be placed either end of the tables to prevent sprawl onto the rest of the pavement.
- 3.2 Condition 5 has been reworded as shown below. This application proposes an increase in the number of tables and chairs and as shown on the dimensioned drawing, these would extend 2 metres from the shopfront. To enable more chairs to be used, it is proposed to place these on the outer edges of the table. It is considered that sufficient pavement width would still be maintained.

### **4.0 RECOMMENDATION**

4.1 Grant planning permission, *subject to the conditions set out below:*

**RBK&C Drawing No(s) PP/03/2569/A.**

**Applicant's Drawing No(s) un-numbered titled "external seating area" dated 26/02/2004.**

Michael J French,  
Executive Director, Planning and Conservation.

**Background papers used in the preparation of this Report:**

The contents of file PP/03/2569.

**Officer Contact**

Miss Tracey Rust, Planning Information Office, Town Hall

1. **The use of the forecourt and the placing of all tables, chairs and plants hereby permitted shall be retained for a limited period only until 01/10/2004 on or before which date the use of the forecourt shall be discontinued.**  
*Reason: Permission for a limited period will enable the authority to reassess the development in the light of the experience of the use.*
2. **This permission shall be personal to All-Bar-One and shall not enure for the benefit of the land. (C006)**  
*Reason - In granting this permission the Local Planning Authority has had regard to the special circumstances of the case/applicant, and considers that use otherwise than by All-Bar-One would have had different implications, and would be likely to have resulted in planning permission being refused. (R006)*
3. **No more than 5 tables and 20 chairs shall be positioned in front of the premises at any one time, and these tables and chairs shall be positioned within 2000 mm of the shopfront and used only in conjunction with the bar use house operating within Class A3 of the Town and Country Planning (Use Classes) Order 1987.**  
*Reason - To prevent further obstruction of the public highway and*



*to safeguard the amenities of the area.*

4. **The forecourt shall not be used as a customer seating area between 23:00 hours and 11:00 hours the following day, at no time other than between 11.00 hours and 23.00 hours shall there be tables and chairs or any plants in front of the premises.**

*Reason: To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

5. **The pavement area in front of the premises, to a distance of 2m from the shopfront, shall be inspected, swept and cleaned so as to be clean and free of litter at all times.**

*Reason - To maintain the amenity of the shopping parade.*

6. **There shall be no planters other than the two planters shown on the approved drawing dated 26/02/2004 or means of enclosure at the front of the premises at any time.**

*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

#### **INFORMATIVES(S)**

1. Before placing any structures, including tables, chairs, or advertisements, on the public highway, you are advised to consult the Directorate of Transportation and Highways, Room 230, Town Hall, Hornton Street W8 7NX (020-7361-3628) regarding consent under the Highways Act which would be required. It is noted that tables and chairs have been placed on the highway without any such consent and you are reminded that the Council has powers of enforcement under the Highways Act 1980.
2. Your attention is drawn to the Conditions of this Permission and to the Council's powers of enforcement, including the power to serve a Breach of Condition Notice under the Town and Country Planning Act 1990, as amended. (I10)

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**PLANNING SERVICES COMMITTEE 17<sup>th</sup> APRIL 2004**

**ADDENDUM REPORT BY THE EXECUTIVE DIRECTOR, PLANNING  
AND CONSERVATION**

**126/8 NOTTING HILL GATE, LONDON W11**

**APPLICATION REF: PP/03/02569**

This addendum report relates to the attached report in respect of an application for the creation of external seating area comprising 5 tables and 20 chairs associated with existing Class A3 food and drink use (variation of conditions attached to planning permission ref. PP/03/1169 dated 1st August 2003).

**FOR DECISION**

**1.0 BACKGROUND**

- 1.1 At the meeting of 3<sup>rd</sup> February 2004 the Planning Services Committee considered the application for the creation of an external seating area comprising 5 tables and 20 chairs (variation of planning permission ref. PP/03/1169 dated 1<sup>st</sup> August 2003). The application proposed variations to three conditions to enable an increase in the numbers of tables and chairs (Condition 3), to increase the hours of operation from 11.00 hours until 23.00 hours (Condition 4) and to include retaining ropes (Condition 5).
- 1.2 The Committee deferred this application to enable the applicant to consider amending the proposal to omit some of the proposed variations to the August 2003 permission.

**2.0 FURTHER CONSIDERATIONS**

- 2.1 The proposed retaining ropes have now been omitted from the application.
- 2.2 It is still proposed to vary condition 3 to increase the number of tables and chairs from 3 to 5 tables and from 12 to 20 chairs and to vary condition 4 to increase the hours of operation from 18.00 to 23.00 hours to 11.00 to 23.00 hours.
- 2.3 An additional letter has been received from the Estate Manager of Mitchell Butlers Retail Ltd in which he states that senior management will ensure that the premises are policed more closely

in future.

- 2.4 In addition, a letter has been received from the agent for the application in which she acknowledges that the lack of a Highways Licence to accompany the outstanding planning consent was a "regrettable omission". However, she stresses that the tables and chairs are not currently in place.
- 2.5 A Highways Licence has now been submitted to the Council and is being considered by the Director of Transportation and Highways.
- 2.6 It should be noted that failure to obtain a Highways Licence would not be grounds for refusing planning permission. Government guidance states that planning legislation should not be used to secure objectives achievable under other legislation. It is recommended that an informative is added to any planning permission to remind the applicant that the Council has powers of enforcement under the Highways Act 1980.

### **3.0 PUBLIC CONSULTATION**

- 3.1 Councillor Campion has requested that Condition 5 is reworded to omit the word "regularly" to ensure that it is clear that the overriding requirement of the condition is for the area to be cleaned and swept so that it is free of litter rather than simply to sweep and cleaned regularly. In addition, he suggests that 2 metres of pavement is more that is required and that the chairs should be placed either end of the tables to prevent sprawl onto the rest of the pavement.
- 3.2 Condition 5 has been reworded as shown below. This application proposes an increase in the number of tables and chairs and as shown on the dimensioned drawing, these would extend 2 metres from the shopfront. To enable more chairs to be used, it is proposed to place these on the outer edges of the table. It is considered that sufficient pavement width would still be maintained.

### **4.0 RECOMMENDATION**

- 4.1 Grant planning permission, subject to the conditions set out below.

1. **The use of the forecourt and the placing of all tables, chairs and plants hereby permitted shall be retained for a limited period only until 01/10/2004 on or before which date the use of the forecourt shall be discontinued.**

*Reason: Permission for a limited period will enable the authority to reassess the development in the light of the experience of the use.*

2. **This permission shall be personal to All-Bar-One and shall not enure for the benefit of the land. (C006)**  
*Reason - In granting this permission the Local Planning Authority has had regard to the special circumstances of the case/applicant, and considers that use otherwise than by All-Bar-One would have had different implications, and would be likely to have resulted in planning permission being refused. (R006)*
3. **No more than 5 tables and 20 chairs shall be positioned in front of the premises at any one time, and these tables and chairs shall be positioned within 2000 mm of the shopfront and used only in conjunction with the bar use house operating within Class A3 of the Town and Country Planning (Use Classes) Order 1987.**  
*Reason - To prevent further obstruction of the public highway and to safeguard the amenities of the area.*
4. **The forecourt shall not be used as a customer seating area between 23:00 hours and 11:00 hours the following day, at no time other than between 11.00 hours and 23.00 hours shall there be tables and chairs or any plants in front of the premises.**  
*Reason: To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*
5. **The pavement area in front of the premises, to a distance of 2m from the shopfront, shall be inspected, swept and cleaned so as to be clean and free of litter at all times.**  
*Reason - To maintain the amenity of the shopping parade.*
6. **There shall be no planters other than the two planters shown on the approved drawing dated 26/02/2004 or means of enclosure at the front of the premises at any time.**  
*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

## **INFORMATIVES**

1. Before placing any structures, including tables, chairs, or advertisements, on the public highway, you are advised to consult the Directorate of Transportation and Highways, Room 230, Town Hall, Hornton Street W8 7NX (020-7361-3628) regarding consent under the Highways Act which would be required. It is noted that tables and chairs have been placed on the highway without any such consent and you are reminded that the Council has powers of

enforcement under the Highways Act 1980.

2. Your attention is drawn to the Conditions of this Permission and to the Council's powers of enforcement, including the power to serve a Breach of Condition Notice under the Town and Country Planning Act 1990, as amended. (I10)

**RBK&C Drawing No(s) PP/03/2569/A.  
Applicant's Drawing No(s) un-numbered titled "external seating area" dated 26/02/2004.**

**Michael J French,  
Executive Director, Planning and Conservation.**

**Background papers used in the preparation of this Report:**  
The contents of file PP/03/2569.

**Officer Contact**  
Miss Tracey Rust, Planning Information Office, Town Hall

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**PLANNING SERVICES COMMITTEE** 13th July 2004

**ADDENDUM REPORT BY THE EXECUTIVE DIRECTOR, PLANNING  
AND CONSERVATION**

**126/8 NOTTING HILL GATE, LONDON W11**

**APPLICATION REF: PP/03/02569**

**RECOMMENDATION  
ADOPTED**

This addendum report relates to the attached report in respect of an application for the creation of external seating area comprising 5 tables and 20 chairs associated with existing Class A3 food and drink use (variation of conditions attached to planning permission ref. PP/03/1169 dated 1st August 2003).

**FOR DECISION**

**1.0 BACKGROUND**

- 1.1 At the meeting of 3rd February 2004 the Planning Services Committee considered the application for the creation of an external seating area comprising 5 tables and 20 chairs (variation of planning permission ref. PP/03/1169 dated 1st August 2003). The application proposed variations to three conditions to enable an increase in the numbers of tables and chairs (Condition 3), to increase the hours of operation from 11.00 hours until 23.00 hours (Condition 4) and to include retaining ropes (Condition 5).
- 1.2 The Committee deferred this application to enable the applicant to consider amending the proposal to omit some of the proposed variations to the August 2003 permission.

**2.0 FURTHER CONSIDERATIONS**

- 2.1 The proposed retaining ropes have now been omitted from the application.
- 2.2 It is still proposed to vary condition 3 to increase the number of tables and chairs from 3 to 5 tables and from 12 to 20 chairs and to vary condition 4 to increase the hours of operation from 18.00 to 23.00 hours to 11.00 to 23.00 hours.
- 2.3 A Highways Licence to correspond with the existing planning permission (for 3 tables and 12 chairs and for operation between 18.00 hours and 23.00 hours) was issued on 13th June 2004. A

**13 JUL 2004**

APPROVED BY  
PLANNING SERVICES CMT  
APPLICATION REF.....

second Highways Licence to correspond with this current application for the proposed increase in the number of tables and chairs and hours of operation has been submitted to the Director of Transportation and Highways who advises that the licence application meets current guidance and is likely to be granted. The agent for the planning application acknowledges that the lack of a Highways Licence to accompany the outstanding planning permission was a "regrettable omission".

### **3.0 PUBLIC CONSULTATION**

- 3.1 Councillor Campion has requested that Condition 5 is reworded to omit the word "regularly" to ensure that it is clear that the overriding requirement of the condition is for the area to be cleaned and swept so that it is free of litter rather than simply to sweep and cleaned regularly. In addition, he suggests that clearing of more than 2 metres of pavement is required and that the chairs should be placed either end of the tables to prevent sprawl onto the rest of the pavement.
- 3.2 Condition 5 has been reworded as shown below. This application proposes an increase in the number of tables and chairs and as shown on the dimensioned drawing, these would extend 2 metres from the shopfront. To enable more chairs to be used, it is proposed to place these on the outer edges of the table. It is considered that sufficient pavement width would still be maintained.

### **4.0 RECOMMENDATION**

- 4.1 Grant planning permission, subject to the conditions set out below.
1. **The use of the forecourt and the placing of all tables, chairs and plants hereby permitted shall be retained for a limited period only until 01/10/2004 on or before which date the use of the forecourt shall be discontinued.**  
*Reason: Permission for a limited period will enable the authority to reassess the development in the light of the experience of the use.*
  2. **This permission shall be personal to All-Bar-One and shall not enure for the benefit of the land. (C006)**  
*Reason - In granting this permission the Local Planning Authority has had regard to the special circumstances of the case/applicant, and considers that use otherwise than by All-Bar-One would have had different implications, and would be likely to have resulted in planning permission being refused. (R006)*
  3. **No more than 5 tables and 20 chairs shall be positioned in**

**front of the premises at any one time, and these tables and chairs shall be positioned within 2000 mm of the shopfront and used only in conjunction with the bar use house operating within Class A3 of the Town and Country Planning (Use Classes) Order 1987.**

*Reason - To prevent further obstruction of the public highway and to safeguard the amenities of the area.*

4. **The forecourt shall not be used as a customer seating area between 23:00 hours and 11:00 hours the following day, at no time other than between 11.00 hours and 23.00 hours shall there be tables and chairs or any plants in front of the premises.**

*Reason: To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

5. **The pavement area in front of the premises, to a distance of 2m from the shopfront, shall be inspected, swept and cleaned so as to be clean and free of litter at all times.**

*Reason - To maintain the amenity of the shopping parade.*

6. **There shall be no planters other than the two planters shown on the approved drawing dated 26/02/2004 or means of enclosure at the front of the premises at any time.**

*Reason - To ensure that there is no obstruction to pedestrian passage along the shopping frontage during the daytime, and to protect residential amenity.*

### **INFORMATIVES**

1. Before any tables and chairs hereby approved are placed on the public highway, a licence under the Highways Act must be obtained. You are advised to consult the Directorate of Transportation and Highways, Room 230, Town Hall, Hornton Street, W8 7NX (020-7361-3628) regarding licence applications. If the use commences without a licence having been first obtained you may be liable to immediate enforcement action under the Highways Act.
2. Your attention is drawn to the Conditions of this Permission and to the Council's powers of enforcement, including the power to serve a Breach of Condition Notice under the Town and Country Planning Act 1990, as amended. (I10)



**RBK&C Drawing No(s) PP/03/2569/A.**

**Applicant's Drawing No(s) un-numbered titled "external seating area" dated 26/02/2004.**

**Michael J French,  
Executive Director, Planning and Conservation.**

**Background papers used in the preparation of this Report:  
The contents of file PP/03/2569 save for exempt or confidential information in accordance with the Local Government (Access to Information) Act 1985.**

**Report Prepared By: DT  
Report Approved By: LAWJ  
Date Report Approved: 30/06/2004**

**PSC/DT.REP**