

COMMITTEE REPORT

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Committee Report

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ROYAL BOROUGH OF KENSINGTON & CHELSEA

REPORT BY THE EXECUTIVE DIRECTOR, PLANNING & CONSERVATION

PLANNING & CONSERVATION COMMITTEE
PLANNING SERVICES COMMITTEE
DELEGATED

APP NO. PP/03/01169
AGENDA ITEM NO.

ADDRESS/SUBJECT OF REPORT:

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

APPLICATION DATED 23/05/2003

APPLICATION REVISED

APPLICATION COMPLETE 30/05/2003

APPLICANT/AGENT ADDRESS:

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

CONS. AREA N/A CAPS No

ARTICLE '4' No 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/03/01169/COTH
PLANNING SERVICES COMMITTEE 22/07/2003
AGENDA ITEM NO. 24

SITE ADDRESS

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

APPLICATION DATED 23/05/2003

APPLICATION COMPLETE 30/05/2003

APPLICANT/AGENT ADDRESS

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

RECOMMENDATION
— ADOPTED

+ Amend Cond. to 1 year
not 3. + Add Cond. Re:
Litter/Kean
area

LISTED BUILDING No CONS. AREA N/A WARD Pembridge

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

CONSULTED 30 OBJECTIONS 1 SUPPORT 0 PETITION 0

Applicant Mitchell & Butlers Retail Ltd.

PROPOSAL: Creation of external seating area comprising 3 tables and 12 chairs (renewal of conditional and time limited period planning permission ref. PP/01/2375 dated 17/06/2002).

RBK&C Drawing No(s): PP/03/01169

Applicant's Drawing No(s): Drawing titled 'External seating area: Option A' received 28 May 2003

RECOMMENDED DECISION:

Grant planning permission

APPROVED BY
PLANNING SERVICES CTTEE

22 JUL 2003

CONSENT REF.....

CONDITIONS/REASONS FOR THE IMPOSITION OF CONDITIONS:

1. **The use of the forecourt and the placing of all tables, chairs and troughs hereby permitted shall be retained for a limited period only until 22/07/2006 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 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 2000 mm 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.

4. **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.

5. **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.

INFORMATIVES

1. I09

2. You are advised to contact the Director of Transportation and Highways as additional consent is required under the provision of section 115 of the Highways Act 1980.

3. You are advised that a number of relevant policies of the Unitary Development Plan were used in the determination of this case, in particular, Policies CD27, CD40 and TR3. (I51)

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 public house 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 property is not listed and is not within a conservation area. The premises is situated within the core frontage of the Notting Hill Gate Principal Shopping Centre.

2.0 DESCRIPTION OF PROPOSAL

- 2.1 Planning permission was 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.
- 2.2 Planning permission is now sought for the renewal and variation of this conditional and limited period planning permission for an external seating area. The application proposes three options for the number of tables and chairs ranging from 3 or 5 tables and 12 or 16 or 18 chairs. It is proposed to extend the hours of use from 11.00 hours to 23.00 hours instead of between 18.00 hours and 23.00 hours as approved under PP/01/2375. In addition, the applicants seek planning permission for a limited time period of three years.

3.0 RELEVANT PLANNING HISTORY

- 3.1 Planning permission was refused on 4th April 1985 for the positioning of 2 tables with two chairs to No. 126 for use in association with the retail coffee shop.
- 3.2 Planning permission was granted on 4th April 1985 for the use of the whole of the ground floor of No. 126 as a café within Class A3.
- 3.3 Planning permission was granted on 20th April 1994 for the placing of 4 tables and 8 chairs outside No. 126. A condition precluded use between the hours of 23.00 hours and 08.00.
- 3.4 Planning permission was granted on 29th September 1997 for the change of use of No. 128 from retail use (Class A1) to bar use (Class A3) with the incorporation of the adjoining café (Class A3) at no. 126 to create a two unit bar (Class A3), the installation of a replacement shopfront with ornamental planter and lanterns and installation of mechanical services at the rear. 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".

- 3.5 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".

- 3.6 Planning permission was refused on the 10th March 2000 for the installation of an openable shopfront.

- 3.7 Planning permission was granted for the creation of external seating area and installation of new shop front on 17th June 2002. This was a temporary permission for one year and limited the number of tables to 3 and chairs to 12.

4.0 PLANNING CONSIDERATIONS

- 4.1 The main considerations in this case are the impact of the proposal on the free flow of pedestrian traffic on the public highway, and the effect on the amenities of occupiers of neighbouring residential properties. Also for consideration is the effect of the proposal on the appearance of the building and the visual amenity of the locality.

- 4.2 The relevant Policies of the Unitary Development Plan include:

CD27 (High standards of design);
CD40 (Noise);
TR3 (Maintain safe environment for pedestrians).

- 4.3 Policy TR3 of the Unitary Development Plan is "to maintain, and improve footways to provide a safe and attractive environment for pedestrians". The width of the pavement at this point is about the widest on the North side of Notting Hill Gate, so that there is a significant width (approximately 5 m) of unobstructed footpath which remains for pedestrians to use even when the tables and chairs are in place. The Director of Transportation and Highways has no objection to the proposed renewal of the permission and states that the unobstructed area should be wide enough to service the existing flow.

- 4.4 The building has a fixed canopy which provides cover for pedestrians walking along the footway. The area of seating would obstruct part of the pavement in front of the unit. The public pavement is well used by pedestrians and when the original application for tables and chairs was considered last year, 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 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 restricted the hours of operation to evening only (from 18.00 hours to 23.00 hours). It is considered that this condition ensures that the footway continues to provide a safe and attractive environment for pedestrians, in compliance with Policy TR3.

- 4.5 Policy CD40 is to resist proposals where the noise generated by the use or activity would cause material disturbance to occupiers of surrounding properties. There are residential flats above the units. However, the units are located on the busy Notting Hill Gate A40 Road and there is a projecting concrete canopy between the shopping parade and the flats above which helps to mask the noise generated by customers in relation to the residential flats above. The Director of Environmental Health has not received any noise and nuisance complaints or any complaints with regard to the licence of the premises and there have been no objections to the proposed renewal of permission by the residents of the flats above the unit. It would therefore appear that the existing number of tables and chairs in the evening have not caused any significant problems in terms of noise and nuisance for residents.
- 4.6 In support of their application, the applicants state that the external seating area has been in place for a year now without causing problems in the area and the manager has received no complaints. The Director of Transportation and Highways has not received any complaints. There have been no planning enforcement complaints with regard to the tables and chairs during the last year (apart from the objection received from Councillor Campion in relation to the renewal of this permission). However, it would appear that tables and chairs have been in place at times during the daytime, and 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 is in breach of the conditions relating to the number of tables and chairs and hours of use and this should be noted in relation to the future likely compliance to any conditions.
- 4.7 The applicant has applied to extend the hours of the seating area to be in line with the hours of the A3 use. All Bar One is open daily from 11.00 serving a lunchtime trade as well as afternoon and evening clientele. They claim that the bar is open continuously throughout the day and there is no convenient time to set the seating area up during the day, without disturbing customers. The Director of Transportation and Highways has no objection to the proposed extension of hours and comments that "extending the hours of operation would not appear to have any negative pedestrian flow effects, as permission currently exists from 18 00 during the evening peak, and no complaints have been received."

- 4.8 However, the restrictions of pedestrian movement and obstruction of the pavement under the canopy, as outlined in paragraph 4.4 above, remain as valid planning considerations and were the main reason for which the time period was limited in the original permission to evenings only. This ensures that there are no obstructions to pedestrian passage along the shopping frontage during the day time. It is not considered that there are any material changes in circumstances since the date of this decision with regard to pedestrian movement which would justify a different planning decision. It is therefore recommended that a condition restricting the hours of operation to evening use only is attached to any permission.
- 4.9 The applicant wishes to increase the number of tables to 5 and the number of chairs to 16 or 18. In support of the increase in numbers, the applicant state that "introducing additional tables and chairs to the external seating area will not have any effect in obstructing the public highway any further than at present as they shall all remain within 2000mm of the shopfront."
- 4.10 Whilst the increased number of tables and chairs would not extend any further from the shop frontage, they would extend across the whole width of the shop and would necessitate the use of retaining ropes. This would further restrict pedestrian movement contrary to the aims of attempting to restrict the amount of pavement obstructed. For this reason, it is recommended that a condition is attached to any renewal of planning permission to maintain the number of tables and chairs at the present number (3 tables and 12 chairs).
- 4.11 In addition, the restriction of the number of tables and chairs would help to protect the amenities of the area, in particularly the residential amenity of those living immediately above the unit. It is therefore recommended that Option A is granted planning permission which shows 3 tables and 12 chairs as existing.
- 4.12 The proposal includes the placing of two planters either side of the bar entrance. The original planning permission contained a condition to prevent the placing of any planters or means of enclosure at the front of the premises at any time. It is considered that these two small planters are acceptable as they would be located by the entrance and in between the tables and chairs and so would not have any impact on pedestrian passage along the shopping frontage.
- 4.13 The applicant has applied for three years permission. Given that it is recommended that the number of tables and chairs remain at the same number as existing and the hours of operation are not changed, it is considered that a one year trial period has been successfully completed and it is appropriate to increase this to three years. The relevant conditions will still enable the tables and chairs to be strictly controlled.

5.0 PUBLIC CONSULTATION

- 5.1 Occupiers of twenty-eight 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 notes that the business still appears to be using the outside seating although the temporary permission has now expired. He comments:

"It has been my experience that in spite of the conditions which limited the use until after 6pm there have been occasions during the day that I have seating in use thus breaching the previously granted conditional permission. I appreciate that during most of the year the weather has been such that chairs and tables have not been such that chairs and tables have not been put outside.

Also from my experience, neither these premises nor the coffee bar further along appear to make much effort to keep the pavement clear of rubbish which is a by product of their customer use of external seating. This was one of my concerns at the time of the original application."

- 5.3 See paragraph 4.6 for comments on the above. In addition, no objections have been received from the occupiers of residential premises above this application in relation to any noise and disturbance during the evening.

6.0 RECOMMENDATION

- 6.1 Grant Planning Permission.

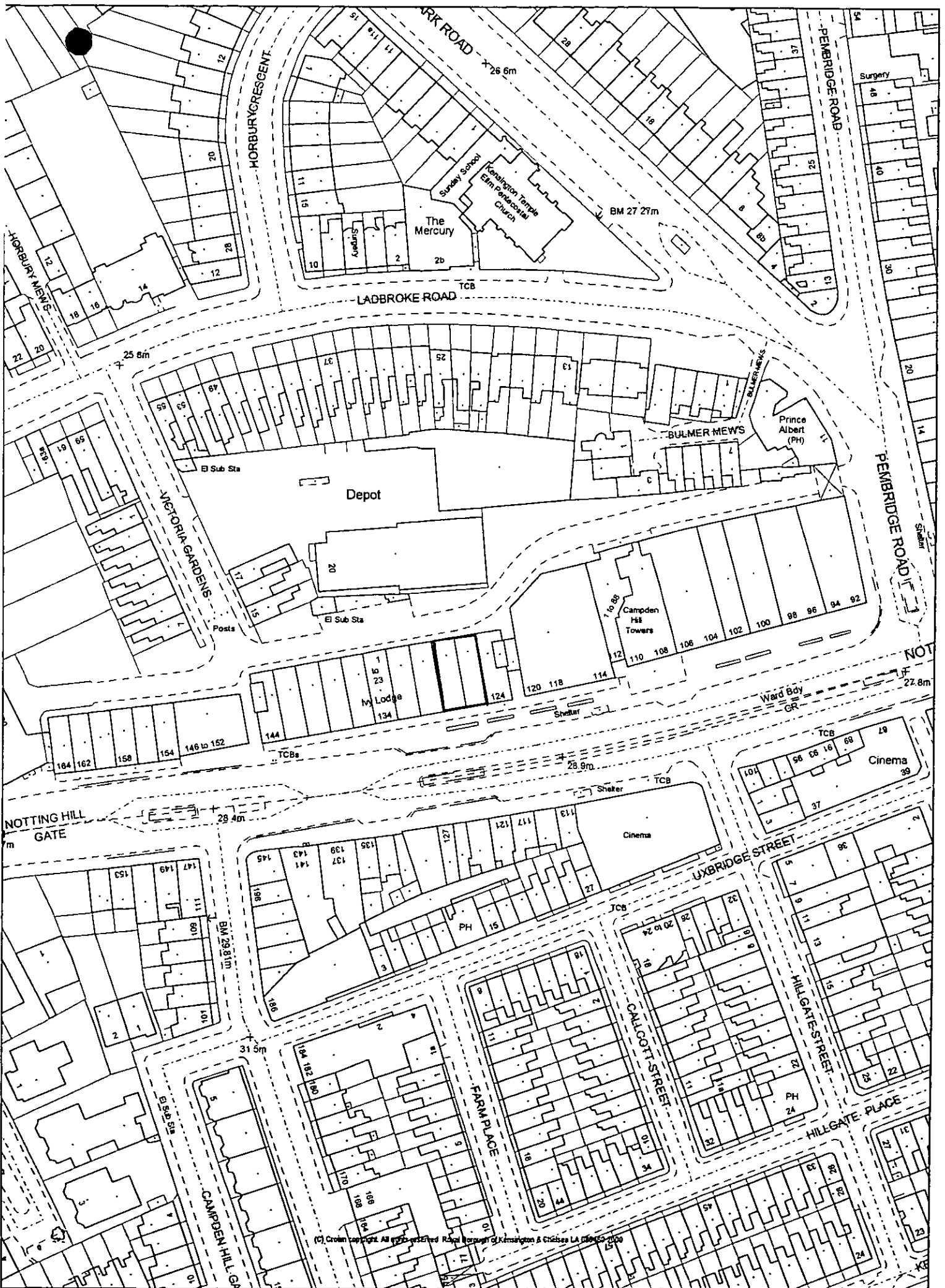
M.J. FRENCH
EXECUTIVE DIRECTOR, PLANNING AND CONSERVATION

List of Background Papers:

The contents of file PP/03/01169 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: 09/07/2003

PSC07/03/SG.REP



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 Planning Services Department using GGP 11/07/2003: Scale 1:1250