

ROYAL BOROUGH OF KENSINGTON & CHELSEA

REPORT BY THE EXECUTIVE DIRECTOR, PLANNING & CONSERVATION

PLANNING & CONSERVATION COMMITTEE
PLANNING SERVICES COMMITTEE
DELEGATED

APP NO. PP/04/00963 /JM
AGENDA ITEM NO.

ADDRESS/SUBJECT OF REPORT:

Mohsen
Restaurant, 152
Warwick Road,
London, W14 8PS

APPLICATION DATED 05/04/2004

APPLICATION REVISED

APPLICATION COMPLETE 30/04/2004

APPLICANT/AGENT ADDRESS:

Mr. M. Mireshghi,
Mohsen Restaurant,
152 Warwick Road,
London,
W14 8PS

CONS. AREA 8 CAPS Yes

ARTICLE '4' No WARD ABA

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:

Ae.

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

Date: 16/06/2004

DELEGATED

APP NO. PP/04/00963/MINR

This application is for a class of development to be determined under powers delegated to me by the Council on 18th July, 2001 and is not a major, controversial or sensitive application nor one which a Ward Councillor has asked to be considered by Planning Services Committee.

Class - 8th Schedule development

RECOMMENDED DECISION:

1 Refuse planning permission

2 Instruct the Director of Law and Administration to issue an Enforcement Notice(s) pursuant to Section 172 of the Town and Country Planning Act 1990 (As Amended) to

- remove the roof structure erected over the rear yard/garden area of the land; and
- remove all resulting demolition materials from the land and to take all legal steps to ensure compliance

3 Instruct the Director of Law and Administration to issue a Breach of Condition Notice(s) pursuant to Section 187A of the Town and Country Planning Act 1990 (As Amended) to secure with Condition 6 of Planning Permission dated 08 April 2003 under reference PP/99/0678 to

- cease the use of the rear yard/garden for dining or drinking or any purpose ancillary to the Class A3 Cafe/Restaurant use and to take all legal steps to ensure compliance

4 Instruct the Director of Law and Administration to issue a Breach of Condition Notice(s) pursuant to Section 187A of the Town and Country Planning Act 1990 (As Amended) to secure with Condition 9 of Planning Permission dated 08 April 2003 under reference PP/99/0678 to

- remove the roof structure erected over the rear yard/garden area of the land and to take all legal steps to ensure compliance

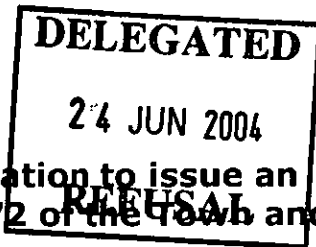
I hereby determine and refuse this application under the powers delegated to me by the Council, subject to the condition(s) indicated below imposed for the reason(s) appearing thereunder, or for the reasons stated.

Exec. Director, Planning and Conservation

Head of Development Control

Area Planning Officer

PP/04/00963



Copy given to LMCB + Legal 24/6/04 vp.

ADDRESS OF SITE:
**Mohsen Restaurant, 152
Warwick Road, London,
W14 8PS**

APPLICATION DATED 05/04/2004

APPLICATION COMPLETE 30/04/2004

APPLICANT/AGENT ADDRESS:
Mr. M. Mireshghi,
Mohsen Restaurant,
152 Warwick Road,
London,
W14 8PS

Mr. M. Mireshghi,

APPLICANT: Mr. M. Mireshghi,

CONS AREA Edwardes Square/Scarsdale/Abi
CAPS Yes
ART '4' No
WARD Abingdon

LISTED BUILDING NO
ENG. HERITAGE N/A

CONSULTED 45
OBJ. 1
SUP. 0
PET. 0

PROPOSAL: Retain and rebuild existing half brick/half timber garden walls with brick and install a glass roof in between to form a new single storey rear extension over the entire rear garden area.

RBK&C Drawing No(s): PP/04/00963

Applicant's Drawing No(s) M/1521, M/1522, 9910/01, 9910/02, 9910/03, 9910/04 and OS Plan.

REASONS FOR REFUSAL

1. **The development projects beyond the rear building line of the property and appears as an incongruous and disjointed structure which dominates the view of the rear elevation of the property and does not preserve or enhance the special interest of the conservation area. It is considered contrary to policies in the Unitary Development Plan particularly Policies CD27, CD47, CD57, CD61 and CD62.**
2. **The development is considered to enable the use of the rear garden as an extension to the restaurant and gives rise to unnecessary noise disturbance to neighbouring residents. It is considered contrary to policies in the Unitary Development Plan particularly Policy CD40.**

INFORMATIVE(S)

1. 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, CD47, CD57, CD61 and CD62 (I51)

1 THE SITE

- 1.1 The application relates to Mohsen Restaurant, 152 Warwick Road, London W14 8PS. The restaurant occupies the ground floor and basement of a three-storey terrace property located on the east side of the busy one-way Warwick Road, A3220 designated road.
- 1.2 The upper floors comprise two residential flats with separate access from the restaurant. There is a sizeable rear yard/garden area which has been enclosed by polycarbonate roof and a wooden fence on top of an existing brick wall. This enclosure of the garden has enabled that area to be developed as an unauthorised extension to the lawful restaurant use.
- 1.3 The use of the rear yard/garden area as an extension of the ground floor restaurant use is in breach of Condition 6 of planning permission PP/99/678. Planning permission for the enclosure of the garden has nether been sought or granted and was required to be removed by Condition 9 of PP/99/678 (paragraphs 3.3 – 3.6).
- 1.4 The property is located within the Edwardes Square, Scarsdale and Abingdon Conservation Area.

2 DESCRIPTION OF PROPOSAL

- 2.1 The application seeks retrospective planning permission to *retain and rebuild existing half brick/half timber garden walls with brick and install a glass roof to form new single storey rear extension over the entire rear garden.*

3 RELEVANT PLANNING HISTORY

- 3.1 A planning application for *change of use to any use within class A3 at ground and basement floors* was granted on 01 April 1996 under reference TP/95/2422.
- 3.2 Planning permission for *erection of a rear extension at basement level to provide improved coldroom and storage facilities to existing restaurant* was granted on 25 September 1998 under reference TP/97/2705.
- 3.3 Planning permission for *retention of rear extension at ground floor level to provide additional floorspace for existing café/restaurant (Class A3)* was granted on 08 April 2003 under reference PP/99/678.
- 3.4 This planning permission (PP/99/678) refers to a full width brick rear extension with a depth of 4 metres that appears to have been

implemented. It does not refer to the application that is the subject of this report to retain a single storey rear extension over the entire rear yard/garden area.

- 3.5 Condition 6 of planning permission PP/99/678 states *the rear yard/garden shall not at any time be used for dining or drinking or any purpose ancillary to the Class A3 Café/Restaurant use.* The reason for imposing the condition was to safeguard the amenity of the area, in particular the levels of amenity presently enjoyed by the occupants of the neighbouring property.
- 3.6 Condition 9 of planning permission PP/99/678 states *the wooden structure with corrugated sheeting erected over the rear yard/garden area of the property is not hereby approved. It is unauthorised and shall be removed within two months of the date of this permission.* The reason for imposing the condition was to safeguard the amenity of neighbouring properties.

4 RELEVANT ENFORCEMENT HISTORY

- 4.1 Following receipt of a complaint from a concerned neighbour, an enforcement case was opened on 21 November 2001 to investigate the erection of a wooden structure over the rear yard/garden area of this premises under reference E/01/2268.
- 4.2 During the course of a subsequent discussion on site, the owner explained that the area was being used as an office/relaxation area. It was explained that planning permission was required for retention of the roof structure. No planning application was received for retention of the roof structure at that time.
- 4.3 At that time, the Council considered retention of the structure unacceptable and a condition was put on a separate application requiring its removal within two months of the date of the permission (paragraphs 3.3 – 3.6). The structure was not removed in compliance with the condition.
- 4.4 An enforcement case is also under consideration in respect of the installation of canopies over the rear garden of the Britannia Public House next door at 150 Warwick Road under reference E/01/2341. An incomplete planning application has been received for retention of the canopies and will be determined on its merits when the necessary information is received and the application is complete.

5 RELEVANT PLANNING CONSIDERATIONS

- 5.1 The two issues for consideration in this application relate to the effect of the development on the;
- character and appearance of the Kensington Conservation Area; and

- amenities of nearby residential properties.

5.2 The relevant Unitary Development Plan (UDP) policies for consideration are as follows:

- CD27 (Standards of Design)
- CD40 (Noise)
- CD47 (Extensions)
- CD57 (Conservation Areas)
- CD61 (Development in Conservation Areas)
- CD62 (Development in Conservation Areas)

5.3 Character and Appearance of the Kensington Conservation Area

The Conservation and Design Officer comments that as a matter of principle, the covering of the rear yard/garden area is not welcomed as it provides relief and a visual break in the dense built up form of the area. Consent has already been granted for a rear extension in April 2003 (paragraphs 3.3 – 3.6) and this would be the maximum encroachment of the garden area that could be permitted.

5.4 The roof structure itself is full width and projects beyond the rear building line of the property and, therefore, does not comply with UDP policies. The proposal appears as an incongruous and disjointed structure which dominates the view of the rear elevation of the property.

5.5 The works do not preserve or enhance the special interest of the conservation area. It is recommended that this application is refused and enforcement action taken against the existing unauthorised structure.

5.6 In the circumstances, the proposal is not considered to comply with Council policies as set out within Chapter 4 (Conservation and Development) of the UDP and in particular with Policies CD27, CD47, CD57, CD61 and CD62.

5.7 Amenities of nearby residential properties

The roof structure has and would continue to enable the use of the rear garden as an unauthorised extension to the lawful restaurant use.

5.8 The Director of Environmental Services comments that as the premises benefits from a supper hours liquor licence, the potential for disturbance from customers utilising the space enclosed by the roof structure could be significant.

5.9 The lightweight nature of the roof structure will not serve to reduce noise emission while any openable vents in the roof to provide ventilation will permit noise to escape.

- 5.10 Although assisted air ventilation and air conditioning could be installed and other measures such as hours of operation can be addressed and made to comply with the Council's noise requirements by the imposition of conditions, it is considered that the development could still give rise to unnecessary disturbance to neighbouring residents.
- 5.11 In the circumstances, the proposal is not considered to comply with Council policies as set out within Chapter 4 (Conservation and Development) of the UDP and in particular with Policy CD40.
- 5.12 The Council has taken into consideration the contents of Planning Policy Guidance 18 (Enforcing Planning Control) and particularly Paragraphs 14 - 18 (Unauthorised Development by Small Businesses or Self-Employed People) in respect of the cost of responding to enforcement action.
- 5.13 However, unanswered letters in respect of the breach were sent to the host address on 29 November and December 2001 and further letters on 16 February and 19 March 2004. Any enforcement action has not, therefore, come as a bolt from the blue (paragraph 16) and, for the reasons indicated in this report, the Council considers enforcement action to be expedient and proportionate in this instance.

6 OTHER CONSIDERATIONS

- 6.1 The complainant has informed the Council verbally that, although he cannot be certain of the precise date, the roof structure was erected approximately three years ago. When informed of this during a site visit 19 May 2004, the applicant did not disagree. Nor has any evidence such as builder's invoices or bills to suggest that the roof structure was erected before that time been provided by the applicant since that time
- 6.2 In the circumstances, the Council considers the roof structure to have been erected within the past four years. The roof structure is not, therefore, immune from enforcement action under S171B(1) of the above Act.
- 6.3 There are wooden fences erected on top of existing brick walls on either side of the rear yard/garden area which are over two metres high. Both constitute development that require planning permission.
- 6.4 However, there are similar fences built on to the side of the rear garden areas of both neighbouring properties. The fences separate the current conflicting uses in the three properties. In addition, there is considerable doubt as to when these fences were erected.

- 6.5 In the circumstances, it is considered expedient to pursue enforcement action against the erection of the roof structure only and not expedient to pursue enforcement action against the fences to either side of the rear yard/garden area.
- 6.6 The appellant has indicated that he would be prepared to accept a personal planning permission being granted for the development. However, the Council does not consider that restricting the use to the current occupier would alleviate any of the objections outlined above.

7 PUBLIC CONSULTATIONS

- 7.1 Letters of notification were sent to 48 properties in Warwick Road, Warwick Gardens and Broadwood Terrace. To date, one letter has been received objecting on the grounds of noise and harm to visual amenity.

8 CONCLUSION

- 8.1 In the circumstances, the proposal is not considered to comply with Council policy as set out within Chapter 4 of the Unitary Development Plan (Conservation and Development) and in particular with Policies CD27, CD40, CD47, CD57, CD61 and CD62.

9 RECOMMENDATION 1

Refuse planning permission.

10 RECOMMENDATION 2

Instruct the Director of Legal Services to issue an Enforcement Notice(s) pursuant to Section 172 of the Town and Country Planning Act 1990 (as amended) for the removal of unauthorised roof structure enclosing the rear garden of 152 Warwick Road, London W14 8PS, and to take all legal steps to ensure compliance.

Breach of Planning Control

The unauthorised erection of a roof structure enclosing the rear garden of 152 Warwick Road, London W14 8PS.

Steps to be taken

- Remove the roof structure erected over the rear yard/garden area of the land; and
- Remove all resulting demolition materials from the land.

Period for compliance for Enforcement Notice

Six calendar months from the date of the Notice taking effect.

Reasons for the issue of Enforcement Notice

It appears to the Council that the above breach of planning

control has occurred within the last four years.

The development projects beyond the rear building line of the property and appears as an incongruous and disjointed structure which dominates the view of the rear elevation of the property and does not preserve or enhance the special interest of the conservation area. It is considered contrary to Policies within the UDP particularly Policies CD27, CD47, CD57, CD61 and CD62.

The development is considered to enable the use of the rear garden as an extension to the restaurant and gives rise to unnecessary disturbance to neighbouring residents. It is considered contrary to Policies within the UDP particularly Policy CD40.

Notices to be served on

Mr M Mireshghi
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

Mrs R Mireshghi
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

The Owner
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

The Occupier
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

The Owner
1st Floor Flat
152 Warwick Road
London W14 8PS; and

The Occupier
1st Floor Flat
152 Warwick Road
London W14 8PS; and

The Owner

2nd Floor Flat
152 Warwick Road
London W14 8PS; and

The Occupier
2nd Floor Flat
152 Warwick Road
London W14 8PS; and

Cranly Properties Limited
25a Holland Street
London W8 4NA;

and any other person with an interest in the land.

11 RECOMMENDATION 3

Instruct the Director of Legal Services to issue a Breach of Condition Notice(s) pursuant to Section 187A of the Town and Country Planning Act 1990 (as amended) to secure compliance with Condition 6 of Planning Permission dated 08 April 2003 under reference PP/99/0678 and to take all legal steps to ensure compliance.

Steps to be taken

Cease the use of the rear yard/garden for dining or drinking or any purpose ancillary to the Class A3 Café/Restaurant use.

Period for compliance for Breach of Condition Notice

Six calendar months from the date of the Notice taking effect.

Reasons for the issue of Breach of Condition Notice

To safeguard the amenity of the area in particular the levels of amenity presently enjoyed by the occupants of the neighbouring property.

Breach of Condition Notices to be served on

Mr M Miresghhi
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

Mrs R Miresghhi
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

The Owner
Moshen Restaurant

152 Warwick Road
London W14 8PS; and

The Occupier
Moshen Restaurant
152 Warwick Road
London W14 8PS.

12 RECOMMENDATION 4

Instruct the Director of Legal Services to issue a Breach of Condition Notice(s) pursuant to Section 187A of the Town and Country Planning Act 1990 (as amended) to secure compliance with Condition 9 of Planning Permission dated 08 April 2003 under reference PP/99/0678 and to take all legal steps to ensure compliance.

Steps to be taken

Remove the roof structure erected over the rear yard/garden area of the land.

Period for compliance for Breach of Condition Notice

Six calendar months from the date of the Notice taking effect.

Reasons for the issue of Notice

To safeguard the amenity of the area in particular the levels of amenity presently enjoyed by the occupants of the neighbouring property.

Breach of Condition Notices to be served on

Mr M Mireshghi
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

Mrs R Mireshghi
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

The Owner
Moshen Restaurant
152 Warwick Road
London W14 8PS; and

The Occupier
Moshen Restaurant
152 Warwick Road
London W14 8PS.

M.J. FRENCH
EXECUTIVE DIRECTOR, PLANNING AND CONSERVATION

Background Papers

The contents of file PP/04/00963 save for exempt or confidential information in accordance with the Local Government (Access to Information) Act 1985.

Report Prepared By: JM
Report Approved By: PK/LAWJ
Date Report Approved: