

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 12 February 2019	Classification For General Release	
Report of Executive Director Growth Planning and Housing		Ward(s) involved West End	
Subject of Report	46 Langham Street, London, W1W 7AX,		
Proposal	Use of public highway for the placing of 5 wooden picnic benches in an area measuring 10m x 1.5m in Middleton Place and 1 picnic bench in an area measuring 1.5m x 1.8m on Langham Street, all enclosed by a total of 9 canvas barriers.		
Agent	Andrews and Boyd		
On behalf of	Samuel Smith (Southern)		
Registered Number	18/08757/TCH	Date amended/ completed	12 November 2018
Date Application Received	15 October 2018		
Historic Building Grade	Unlisted		
Conservation Area	East Marylebone		

1. RECOMMENDATION

Grant conditional permission for a temporary period of one year.

2. SUMMARY

The application site is a public house located on the southern side of Langham Street at its junction with Middleton Place. The immediate area is characterised by a mixture of residential and office uses although Middleton Place is primarily in residential use.

There is a long history of temporary permissions for the placing of place tables and chairs outside the property, the latest of which expired on 30 November 2018. The proposed seating layouts are the same as those previously approved, although the applicants have reduced the proposed hours of use in response to residents' concerns.

Objections have been received including on the grounds of late night disturbance, highways obstruction and increased litter generation and on the basis that the approved Management Strategy/Plan for the use of the tables and chairs has not been adhered to. However, the Middleton Place Residents' Association reports a significant improvement in the management of the external seating areas since the premises management changed in Summer 2018.

Item No.

5

<p>Subject to conditions, the scheme is considered acceptable on highways and amenity grounds. However, it is recommended that permission is granted for a temporary period of one year to enable the situation to be monitored.</p>
--

3. LOCATION PLAN



This production includes mapping data licensed from Ordnance Survey with the permission of the controller of Her Majesty's Stationary Office (C) Crown Copyright and/or database rights 2013. All rights reserved License Number LA 100019597

4. PHOTOGRAPHS



1 Sep 2016 15:03:24



5. CONSULTATIONS

FITZROVIA NEIGHBOURHOOD ASSOCIATION

Any response to be reported verbally.

HIGHWAYS PLANNING MANAGER

No objection

CLEANSING:

No objection

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 52

Total No. of replies: 7 (including from the Middleton Place Residents' Association and on behalf of 50 residents/27 leaseholders of 89 Great Portland Street)

No. of objections: 7

No. in support: 0

Objections on the following grounds:

- * Noise disturbance and nuisance;
- * Highway obstruction;
- * Applicants do not comply with undertakings in the Management Plan.
- * Litter generation

ADVERTISED/ SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site is a public house located on the southern side of Langham Street on the corner with Middleton Place, which is a pedestrianised residential mews. The application property comprises basement storage, customer bars/seating areas on ground and first floor, a second floor kitchen and an ancillary staff flat at third floor level.

The premises licence permits the public house to open to customers until 23.00 hours on Monday to Saturday and until 22.30 hours on Sundays, with special arrangements for public holidays and Bank Holidays.

The surrounding area is characterised by a mixture of residential and office uses. The neighbouring property at No. 44 Langham Street has residential accommodation on the upper floors. Middleton Place is predominantly residential in use.

6.2 Recent Relevant History

There is a history of permission for the placing of tables and chairs outside the premises dating back to 1986. Most recently, on 7 November 2017, the Planning Sub-Committee granted further permission for a temporary period of one year subject to additional

conditions including a requirement that the applicants adhere to the terms of the approved Management Strategy.

7. THE PROPOSAL

Permission is sought for the use of public highway for the placing of 5 wooden picnic benches on Middleton Place, in an area measuring 10m x 1.5m, and 1 picnic bench in Langham Street, in an area measuring 1.5m x 1.8m, enclosed by a total of 9 canvas barriers. This is the same layout as approved in November 2017, and previously.

The most recent permission allowed the use of external seating between 11.00 and 22.30 hours on Monday to Saturday, and from noon until 22.30 hours on Sundays, after which time the benches were to be up-ended and chained to the building. In response to objectors' concerns, the applicant now proposes that the use of the seating would not commence before 12.00 on any day and that the Sunday terminal hour would be reduced to 22.00.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The use of the highway for tables and chairs in connection with eating and drinking establishments is assessed under Unitary Development Plan (UDP) Policy TACE 11 and Policy S41 of the City Plan. These policies permit tables and chairs where there would be no adverse obstruction on the highway and no material harm to the local residential amenity. These matters are discussed in paragraphs 8.3 and 8.4 below.

8.2 Townscape and Design

The proposed picnic benches are considered acceptable in townscape terms and, being impermanent, would not harm the character and appearance of the East Marylebone Conservation Area. The use of the barriers is considered acceptable on the basis that, in this instance, they do not display advertising. An informative to this effect is recommended.

8.3 Residential Amenity

The nearest residential accommodation is located above the public house and adjacent, at 44 Langham Street. There are also several residential dwellings in Middleton Place in close proximity to the site.

Objections have been received from local residents in Langham Street, Great Portland Street and Ogle Street. One objection relates to the principle of late night entertainment uses and their impact on the character of the area and the local environment. Most objectors re-iterate previous concerns regarding the principle of late night drinking outside the premises (and associated noise disturbance), and the fact that external drinking is not confined to the area immediately outside the public house resulting in highway obstruction, the obstruction of neighbouring doorways and additional

disturbance and nuisance from customer smoking and littering. However, the Middle Place Residents' Association, whilst reporting a continued problem with general highway obstruction beyond the designated seating areas, states that there has been a significant improvement in the management of the external seating areas since Summer 2018.

Several respondents have requested that the use of the external seating should not be permitted beyond 22.30 hours and that any permission should be limited to a further temporary period. Others have requested a reduction in the number of benches and/or their capacity to minimise the number of customers and potential noise disturbance.

One objector has referred to recent refusals of planning permission and licences for external seating on other sites – on both amenity and highways terms. However, the current application must be assessed in relation to the particular circumstances of this site and decisions made in relation to other premises are not considered to be relevant to the consideration of this application.

The matter of vertical drinking on the public highway outside of the designated seating areas is one for licensing rather than planning controls. However, this issue was brought to the attention of the new operator, Samuel Smith, during the consideration of a 2011 application (as the brewery had taken control of the premises in 2010). At that time, the applicant was keen to address residents' concerns over problems associated with external drinking and submitted a Management Strategy, which was designed to show how drinking outside the premises, within the designated seating area, would be controlled, and the areas managed and maintained, but also made clear that any customers stepping outside of these areas would not be served.

This Management Strategy forms part of the current application. It proposes the demarcation of external areas to which customers, standing or seated, would be confined to keep them away from neighbouring residential properties. These areas would be regularly monitored by staff. As part of a wider commitment to reducing noise disturbance the Strategy confirms that the premises would not provide music, entertainment or television and would not serve 'alcopops'.

In response to the additional objections from neighbours to this application, the brewery has recently submitted an updated 'Management Plan – Control of External Areas' which includes the reduced operating hours, as well as a commitment to undertake regular litter patrols and glass collections. This document is the same as the one referred to by objectors which was formulated as a result of discussions between the applicant and City Council Licensing Officers.

It is noted that complaints have been made to the City Council's Licensing Team relating to noise disturbance and highway obstruction (vertical drinking) with one active complaint being investigated. The Street Trading Licence was renewed on 21 November 2018 (until 9 July 2019) for the placing of tables and chairs on the highways between 11.00 and 23.00 on Monday to Sunday and between noon and 22.30 hours on Sundays. Since Summer 2018, when the public house came under new management, no further licensing noise complaints have been received.

The City Council's Planning Enforcement Team has recently closed an investigation, from October 2016, relating to a breach of Conditions 3 and 4 of a 2016 permission (16/07002/TCH) for the placing of tables and chairs on the highway concerning the hours of operation and use of the benches by non-patrons. The Planning Enforcement Team have not received any further complaints since sending a warning letter to the public house in December 2016.

This is a historic public house use, with a history of permissions for tables and chairs outside the premises, dating back over 30 years. As with the previous application, objections principally relate to the issue of drinking outside of the designated seating areas rather than to the use and control of these proposed areas, and this matter falls outside of planning control. In the absence of any permitted external seating it appears likely that the area vacated by the picnic benches could be taken over by a (potentially) greater number of "vertical" drinkers. It is important therefore to differentiate between the impact of activity taking place within the seating area, which is the subject of this planning application, and the drinking activity currently occurring elsewhere on the public highway.

In these circumstances, subject to conditions, including those relating to reduced operating hours and requiring the applicant to operate in accordance with the submitted Management Plan and Management Strategy, the proposals are considered acceptable on amenity grounds. Given this, it would not be reasonable to require a reduction on the seating capacity.

8.4 Transportation/Parking

The Westminster Way requires a minimum 2.0m width of public highway beyond the proposed seating area to be maintained, free of physical obstructions, to allow for pedestrian traffic. The plan shows an unobstructed highway width of 2.6m on Middleton Place and 2.8m on Langham Street.

The Highways Planning Manager has expressed concern that there are no openings between the canvas barriers and that the service corridor between the picnic benches and the canvas barriers, at 0.2m wide, does not accord with the 0.9m width recommended in the Highways Planning Guide. However, as these arrangements are identical to those approved in 2012, 2014, 2016 and 2017 they have made no objection.

As detailed above, objections on the grounds that customers congregate in Middleton Place and on Langham Street, outside of the proposed seating areas, are not directly relevant to the current application and cannot justifiably form the basis of a recommendation for refusal and the proposal is therefore considered acceptable on highways grounds.

8.5 Economic Considerations

Any economic benefits generated by the proposals are welcome.

8.6 Westminster City Plan

The City Council is currently working on a complete review of its City Plan. Informal consultation on the first draft of Westminster's City Plan 2019-2040 started on Monday 12 November 2018 and closed on Friday 21 December 2018. Following this informal consultation, any representations received will be considered and the draft plan will be revised in advance of formal consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012. Given the very early stage of the consultation process and having regard to the tests set out in para. 48 of the NPPF, the policies of the emerging draft City Plan are given little to no weight at the present time.

8.7 Neighbourhood Plans

Not applicable

8.8 London Plan

This application raises no strategic issues.

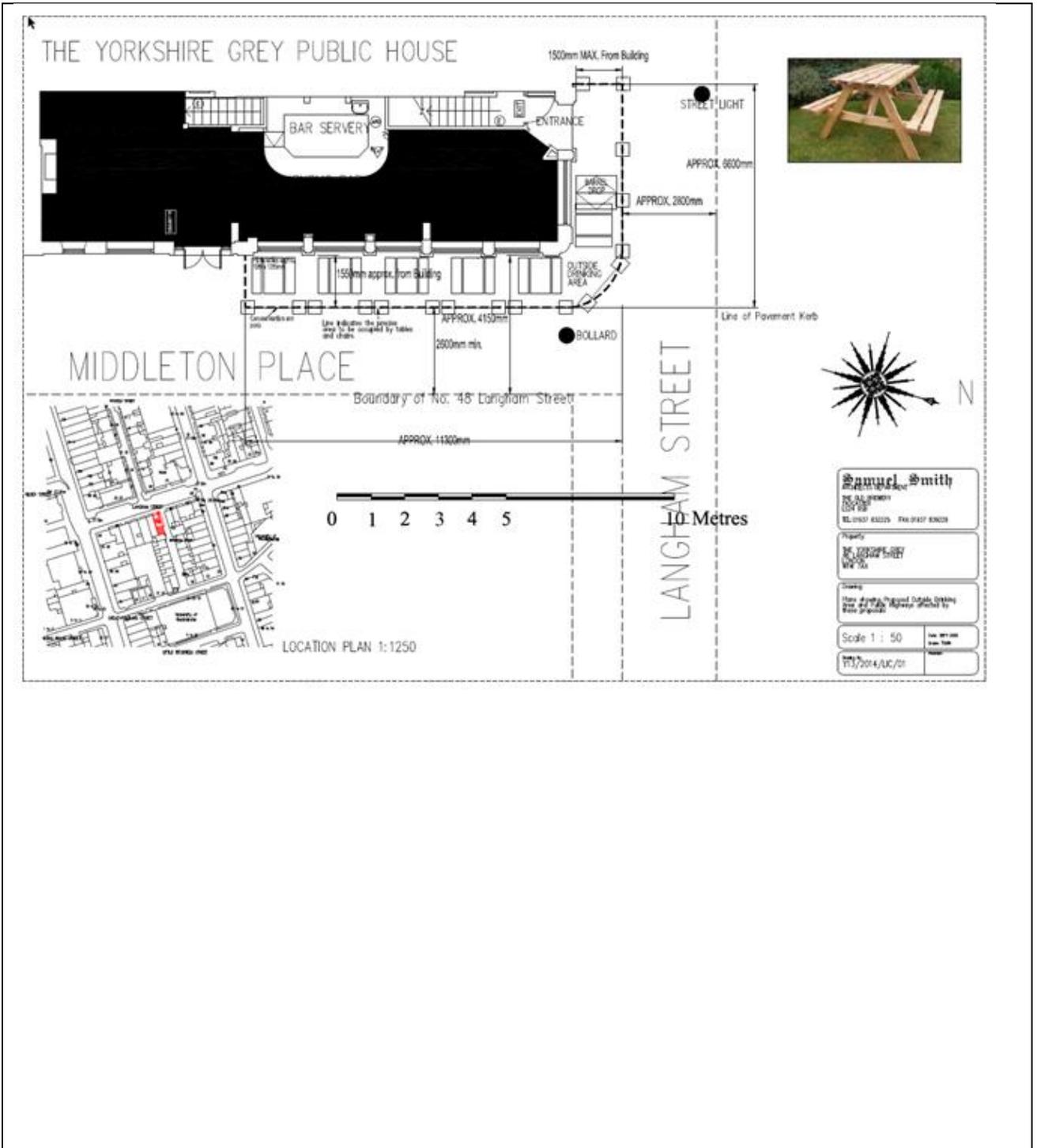
8.9 Conclusion

Whilst it is accepted that there have been problems associated with drinking outside of the premises, particularly in the summer months, much of this is a result of drinkers standing in Middleton Place beyond the designated seating areas rather than due to activity within these areas. These problems would be unlikely to cease if the current application was refused, since standing outside a public house to drink is not an activity that falls within planning control. Furthermore it is considered that the proposal, properly managed, will enable the applicant to contain the patrons in the approved areas. Given the reported improvements of the management of the site, it is recommended that permission be granted for a further temporary period of one year to allow the situation to be monitored.

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: SARA SPURRIER BY EMAIL AT mwalton@westminster.gov.uk

9. KEY DRAWINGS



DRAFT DECISION LETTER

Address: 46 Langham Street, London, W1W 7AX,

Proposal: Use of public highway for the placing of 5 wooden picnic benches in an area measuring 10m x 1.5m in Middleton Place and 1 picnic bench in an area measuring 1.5m x 1.8m on Langham Street, all enclosed by a total of 9 canvas barriers.

Reference: 18/08757/TCH

Plan Nos: Y13/2014/LIC/01, Management Strategy Plan received 15.10.2018, Management Plan/Control of external areas received 03.01.2019

Case Officer: Shaun Retzback

Direct Tel. No. 020 7641 6027

Recommended Condition(s) and Reason(s)

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 You must not put the picnic benches in any other position than that shown on drawing Y13/2014/LIC/01 and barriers must be in place at all times that the picnic benches are in use.

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 3 You can only put the picnic benches and barriers on the pavement for use by public house customers between 12.00 and 22.30 Monday to Saturday and 12.00 and 22.00 Sundays. Outside these times the picnic benches shall be removed from the pavement or securely chained upright to the side of the public house premises and the barriers shall be stored within the premises

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 4 The picnic benches must only be used by customers of the existing public house. (C25CA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 5 This use of the pavement may continue until 28 February 2020. You must then remove the wooden picnic benches and, where relevant, other furniture, equipment or screening hereby approved. (C25DA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

- 6 The picnic benches hereby approved must only be operated in accordance with the measures included in your Management Strategy received on 15 October 2018 and Management Plan - Control of External Areas received 3 January 2019.

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and TACE 11 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 7 The area of footway is to be maintained in a clean and tidy condition at all times, litter receptacles are to be provided and the footway is to be thoroughly washed down each day after trading has ceased.

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, neighbourhood plan (where relevant), supplementary planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 You cannot put tables and chairs in the area unless you have a street trading licence., , If you want to know about the progress of your application for a licence, you can contact our Licensing Service on 020 7641 8549. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter., , Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times. (I47AB)
- 3 You must keep the tables and chairs within the area shown at all times. We will monitor this closely and may withdraw your street trading licence if you put them outside this area. (I48AA)
- 4 You are advised that customers not seated on the benches should be confined to the 'outside drinking area' shown on the floor plan.
- 5 You are advised that if the use of the approved seating area is not carried out in accordance with the approved drawings and Management Plan, any future application to renew the permission for outside seating is unlikely to be considered favourably.
- 6 The terms of the Management Strategy received on 15 October 2018 and the Management Plan - Control of External Areas received 3 January 2019 must be adhered to. If the City Council continues to receive complaints planning permission is unlikely to be renewed.
- 7 You are reminded that the canvas barriers enclosing the seating areas must not contain advertisements or logos.

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.

Item No.

5
