
Appeal Decision

Site visit made on 14 June 2016

by M Seaton DipTP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/V4630/W/16/3146805

The Fiery Holes Public House, Great Bridge Road, Bilston, Walsall, WV14 8NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Harjinder Singh Bagri against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 15/0331/FL, dated 3 March 2015, was refused by notice dated 23 September 2015.
 - The development proposed is a two storey side extension to form a convenience store with manager's accommodation above, the conversion of the north-west side of the existing premises to form a hot food takeaway, and alterations to form new toilet facilities and a re-configured lounge area to the public house.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey side extension to form a convenience store with manager's accommodation above, the conversion of the north-west side of the existing premises to form a hot food takeaway, and alterations to form new toilet facilities and a re-configured lounge area to the public house at The Fiery Holes Public House, Great Bridge Road, Bilston, Walsall, WV14 8NG in accordance with the terms of the application Ref 15/0331/FUL dated 3 March 2015, and subject to the conditions set out in the Annex.

Procedural Matters

2. During the course of the Council's assessment of the planning application, further details and information were submitted by the appellant on two separate occasions in June and September 2015, in response to issues which had been raised in correspondence sent by the Council.
 3. The information submitted included a series of amended drawings showing clarification in respect of the roof form and layout, changes to the fenestration in response to the position of the extraction duct, changes to ensure the ventilation stacks were shown as achieving a 1 metre clearance above the roof ridge, and the addition of an odour extraction system for the kitchen extension.
 4. Furthermore, additional reports comprising a Noise Assessment and Transport Statement were submitted. On the basis that these plans and information informed the Council's decision on the planning application, I have also taken them into account in my determination of this appeal.
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Background and Main Issues

5. In its submissions, the Council has indicated that the current proposed development follows a previous refusal of planning permission in 2014 for a similar scheme in respect of its incorporation of a convenience store, hot food takeaway and internal reconfiguration of the public house. The Council has now concluded in its evidence that it is satisfied with the proposed development the subject of this appeal in respect of the retail principle of the development; the impact of the design on the character and appearance of the area; the impact on highway safety, traffic generation and parking provision; and that there would not be any issues related to ground stability and contamination. However, the Council has retained concerns over incidences of crime and anti-social behaviour at the appeal premises, as well as the potential for an adverse impact from the development on the living conditions of neighbouring occupiers.
6. As a consequence, the main issues are;
 - the effect of the proposed development on crime and the fear of crime; and,
 - whether the proposed development would safeguard the living conditions of neighbouring occupiers, having regard to noise and disturbance, and the emission of odours.

Main Issues

Crime and fear of crime

7. Paragraph 69 of the National Planning Policy Framework (the Framework) indicates planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. Furthermore, I am mindful that the courts have held that the fear of crime is only a material consideration where the use, by its very nature, would provide a reasonable basis for concern.
8. The proposal is subject to an objection from West Midlands Police who are concerned that the proposal would result in an increased level of business and activity on a site where a significant number of Police incidents have been recorded, and that there would be a resultant increase in crime and the fear of crime in the local area. My attention has been drawn particularly to July 2015 when there were 13 Police incidents recorded, and 25 within 2015 as a whole. This concern is shared by the Council and local residents.
9. The Council has highlighted that during the assessment of the previous refused 2014 planning application, over a 12 month period there had been 9 recorded incidents which had required Police attendance, with regular complaints received regarding after hours drinking and excessive noise. On this basis, the Council has drawn a direct comparison between the reporting of 13 Police incidents within a single month in 2015, and the annualised total from the previous application, and concluded that there has been a significant worsening of crime issues at the premises. I have also had regard to the Council's reference to the under-reporting of crime as set out in the *Office for National Statistics Statistical Bulletin: Crime in England and Wales, Year Ending December 2014*.

10. In response to this contention, the appellant has referred me to a copy of the log of reported Police incidents for July 2015, which indicates that of the received calls, at least 6 could be disregarded due to the nature of the call, which included traffic-related incidents. Furthermore, the appellant has indicated that of the remaining 7 calls, the police log indicates only 4 relate to recorded crime, albeit that the exact circumstances are not expressed. Furthermore, I note from the submitted log of 25 calls to West Midlands Police for the entire year of 2015, that the number of calls to the police in July 2015 could not be considered to be representative of a normal monthly response.
11. It is evident that the existing public house experiences some issues with incidences of crime, and on the basis of the submissions it would seem apparent that the principal source of concern with the proposed development relates to the hot food takeaway. However, despite these concerns, I am not persuaded that it is a foregone conclusion that the presence of either a retail unit or hot food takeaway at the site would inevitably result in an increase in crime, and I do not find there to be any conclusive evidence before me from which to reach a conclusion that it would. In respect of the potential under-reporting of crime, I would agree with the appellant that it would be unreasonable to premise the decision on this appeal on an assumption that there may be unreported crime in this location.
12. Whilst I have carefully considered the Council's submissions regarding the impact of the development on the fear of crime, I do not accept in this instance that the imposition of mitigative measures such as CCTV would raise the fear of crime, particularly in light of the clear awareness of local residents of the existing issues related to the public house. Furthermore, and accepting that it is not the role of the proposed development to resolve the existing issues related to crime, I nevertheless consider that the installation of CCTV on the appeal site related to the proposed units would act as a significant and effective deterrent to any incidences of anti-social behaviour and would safeguard the proposed development from such incidences.
13. I have carefully considered all the evidence placed before me, but I am satisfied that it would be possible to implement reasonable and appropriate security measures and control over hours of opening of the proposed units, in order to address and mitigate against the potential for crime, and also the fear of crime. In this respect, I do not find there to be conflict with saved Policy ENV32 of the Walsall Unitary Development Plan 2005 (the Walsall UDP), which requires the design of any development proposal to have regard to community safety and security. I also do not find conflict with paragraph 69 of the Framework which seeks to ensure that developments create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.

Living conditions

14. The Council has expressed concerns in respect of the effect of the proposed development on the living conditions of neighbouring properties, relating specifically to the potential for adverse impacts in terms of cooking odours, and noise and disturbance. The absence of any detail of grease traps is also cited within the reason for refusal. The Council's conclusions stem particularly from concerns related to the cumulative impact when the proposed uses are

considered in conjunction with the operation of the public house and ancillary hot food takeaway.

15. The appellant submitted a noise assessment during the course of the planning application which addresses the impact of the proposed hot food takeaway and convenience store. The assessment has specifically covered issues related to noise associated with customer car parking activity, as well as from the proposed ventilation systems associated with the hot food takeaway. The assessment provided an overview of existing baseline noise levels, where it was identified that the predominant existing noise source was from passing traffic on the surrounding road network. As a consequence of existing baseline noise levels, the conclusion indicated that the intensification of use of the car park would have an imperceptible impact on noise levels, with the significance of the impact judged to be negligible, whilst noise levels from the inlet of the supply system and the exhaust of the extract system would be 11dB below background noise level, with appropriate attenuation.
16. I note that the Council has not raised any objection to the conclusions of the noise assessment in respect of the baseline noise levels. I have carefully considered though, the Council's contention that the submitted noise assessment fails to provide an adequate level of certainty regarding the noise levels on site and frequency of occurrence. In respect of the car park, the appellant has drawn my attention to the explanation within the noise assessment of typical car park activities, as well as details regarding predicted frequency as set out within the submitted Transport Statement. Whilst I note that not all possible scenarios of disturbance envisaged by the Council associated with the use of the car park have been covered, I consider the extent of the coverage provided by the noise assessment to be reasonable in their scope and in the context of the proposals and car park use.
17. Turning to the concerns over the impact of the extraction equipment on the kitchen extension to the public house, I note that at the time of the noise assessment the equipment had not been installed. I also note that in determining the application for the kitchen extension that the Council did not seek to impose any controls over the noise levels generated by the equipment. In respect of the Council's concerns now over the cumulative impact of noise from equipment, beyond references to various complaints over noise from the public house, the Council has not provided any technical evidence to support the concerns over the cumulative noise impact from both the public house and the proposed uses.
18. I accept that the ventilation systems attached to both the public house and hot food takeaway are likely to be operational over broadly the same period. However, in light of the conclusion reached regarding the predicted plant rating noise levels following attenuation for the proposed equipment, it is evident that these levels will be well below the existing background noise level, and irrespective of the noise impact of the already approved equipment related to the kitchen extension. In any event, the kitchen extension equipment would be a contributor towards the background noise level, as a consequence of the extant consent from which it already benefits. In respect of the majority of other noise generating activities related to the proposed uses, I consider that these are likely to be distributed across the duration of opening of the premises, rather than concentrated at particular times, and unlikely to result in any significant impacts.

19. Therefore, despite the proximity of the nearest dwellings to the access point and proposed use, in the context of the appeal site's existing commercial use and the existing background noise levels during the daytime, I do not consider that any such noise impact would be so significant as to be unacceptable.
20. I have had regard to the appellant's submissions related to the control of odour emissions, and the details of measures which have already been submitted to the Council during the course of the planning application in respect of odour filtration and extraction equipment details. Furthermore, I have also carefully considered the Council's concerns over an accumulation of odour emissions from the premises when considering the impact of the proposed takeaway use with the existing kitchen. However, whilst I acknowledge the Council's concerns, it would seem to me that the appellant has already sought to put in place both reasonable and proportionate measures to prevent the proliferation of odour emissions from the proposed use. In this respect, I would accept that it has been satisfactorily demonstrated that measures could be accommodated to mitigate the impact of odours, and I see no reason why any concerns over regular cleaning and maintenance could not be suitably controlled through the imposition of an appropriate condition.
21. Turning to the issue of grease traps, I have noted the appellant's reference to the Council's approach on an earlier planning application for the extension of the existing commercial kitchen at the public house, where the issue of grease traps was addressed by planning condition. Whilst I accept that the previous approval related to the extension of an existing kitchen and I note the proposed hot food takeaway would be closer to residential properties, I do not consider this to provide a compelling basis why the Council has not adopted the same approach in respect of the current proposals. Furthermore, I note that the appellant has already submitted technical details of proposed grease traps within the design specification for the supply and extract ventilation system, which was submitted with the planning application. As a consequence, I am satisfied that a technical solution is feasible for the premises, and that the Council would retain sufficient control through the imposition of an appropriate planning condition.
22. I have carefully considered the Council's reference to a number of complaints which have been received by the Environmental Health team in connection with the public house, and specifically related to the storage of refuse, loud music, smoke nuisance and odour nuisance. Whilst I accept that the issues raised are similar to matters which could arise in respect of the operation of the proposed development, I do not consider it to be reasonable to presume that the proposals would definitely result in the same problems or issues arising. For the reasons already given, I am satisfied that the proposals would provide the necessary safeguarding of the living conditions of neighbouring occupiers, and would provide the Council in addition to any available controls in respect of the licensing regime, with the ability to enforce against any issues which may arise.
23. Interested parties have raised several further issues related to concerns over the arrangements for refuse storage, the overlooking of a neighbouring dwelling, and the visual intrusion arising from car headlights. In respect of refuse storage, I note that an area for waste recycling has been indicated on the layout plan to the rear of the proposed convenience store and hot food takeaway. Whilst there is only limited detail submitted as to the precise arrangements for refuse and recycling, it is clear from my observations on the

site that it would be possible to accommodate an appropriately sited and sized facility, and I am satisfied that this is a matter which can be addressed by condition.

24. Turning to the issue of overlooking, I have observed the relationship between the position of the proposed development and neighbouring properties, with a particular focus on No. 112 Great Bridge Road, and Nos. 10 & 11 Ashtree Close as the nearest dwellings. However, whilst I accept that the proposed extension to the existing building would introduce development closer to the neighbouring properties, from my observations I would agree with the Council's assessment that there would not be an adverse impact on living conditions in respect of privacy, impact on light, or overbearing impact as a consequence of the proximity of the development.
25. With regards the issue of light pollution from vehicles exiting the site, I note that the access is existing and that such an impact would already be experienced by properties opposite the site. Whilst I accept that the frequency of such an impact may increase and give rise to some additional limited annoyance, I do not consider on the basis of my observations of the wider area that such a relationship is either unusual or uncharacteristic in the context of either road junctions in the area or other premises which provide off-street parking to service their functions. Furthermore, the Council has not drawn my attention to a Development Plan policy or design guidance specifically addressing the impact of light pollution from moving vehicles, or incorporated such a concern within its reasons for refusal.
26. I have carefully considered the evidence placed before me, but I am satisfied that with appropriate mitigation, the proposed development would safeguard the living conditions of neighbouring occupiers, having regard to noise and disturbance, and the emission of odours. As a consequence the proposals would not conflict with Policies CSP4, ENV2, CEN2 & CEN6 of the Black Country Joint Core Strategy (the Core Strategy), or saved Policies 3.7, GP2, ENV10, ENV32, S6 and S10 of the Walsall UDP 2005. These policies seek to ensure that small-scale local facilities are of an appropriate scale, high quality design, and protect people from unacceptable noise, odours, pollution and other environmental problems, including on a cumulative basis, where there may be detriment to nearby land uses.

Other Matters

27. Further to the main issues addressed above, interested parties have raised a number of other concerns related to the proposed development. These include the need for further convenience store and hot food takeaway provision within the area, the impact on available parking on the appeal site and appropriateness of the access for additional traffic, the design being uncharacteristic, restriction of access to the gas substation and only limited public transport serving the area.
28. In respect of the need for the proposals, with reference to Policy CEN6 of the Core Strategy, the Council has accepted that the appellant has satisfactorily demonstrated that the small-scale of the proposals would not divert trade away from Moxley Local Centre, and that despite the presence of other such units in the area, that there is a local need in this location. In the absence of contrary technical evidence, I would not disagree with these conclusions. I have also had regard to the appellant's submissions regarding the improvements to the

vitality and viability of the public house, and the prevention of its loss, as well as the provision of additional economic benefits within the area as a consequence of the delivery of 5 additional full-time equivalent jobs. I consider that these are factors which must also provide some additional weight in support of the principle of the proposed development.

29. The Council has indicated that the development would meet the policy requirements for parking provision as set out in the Walsall UDP, and I observed it is also possible to readily park on-street close to the appeal site if the car park were full. Furthermore, I am satisfied that the existing retained access provides for adequate visibility in each direction, which it is highlighted to be in excess of the minimum highway requirements. I also do not consider that the predicted level of traffic generation from the premises would result in an unacceptable impact on existing highway conditions. I have noted the reference made to the limited availability of bus services in the area, although I would disagree with this contention given that the bus stops close to the appeal site offer a frequent service to surrounding areas. In any event, this is not a matter identified as being of concern for the Council.
30. Turning to the design of the proposed extensions to the premises, I am satisfied that the extensions would appear subservient in their appearance, and would reflect the character of the existing building through the use of materials and design detailing, including the windows. Whilst I accept that the roof profile of the extension would be lower than that of the existing building, I do not consider that this would detract from the overall design and appearance.
31. I have noted the reference to access to the sub-station on the site, but I do not consider on the basis of the submitted plans that access to the sub-station, which will continue to be adjacent to an area of parking, will be restricted to any significant degree.
32. In determining the appeal, I have recognised the strength of local opposition with the submission of a petition. However, this would not in itself warrant the dismissal of the appeal.

Conditions

33. In the interest of proper planning, conditions relating to timeliness and the identification of plans would be necessary, and I have added a condition seeking adherence with the conclusions and recommendations of the various technical reports submitted in support of the proposed development. Details of ground gas ingress measures and an investigation into ground conditions would be in the interests of the safety of users of the proposed development and during construction works respectively. The requirement for drainage plans would be in the interest of preventing the creation or exacerbation of issues related to flooding. The submission of details of the external materials to be used on the proposed development would be necessary to ensure the satisfactory appearance of the development within the area.
34. The provision of the parking and manoeuvring areas on site would be in the interest of the operation of the site and highway safety, whilst for the same reason the inclusion of a suitable boundary treatment would prevent any incursion by vehicles on to the public footway, and would safeguard the visual amenity of the development. Full details of the provision of cycle parking would be necessary to encourage sustainable travel. Details of a Servicing and Waste

Management Plan would also be required in the interests of highway safety and the environmental management of the site. Controls over the timings of working during demolition, construction and engineering phases of the development would be required to ensure that the living conditions of neighbouring occupiers are safeguarded.

35. I have noted that conditions related to the development meeting *Secure by Design* specification and securing the details of a scheme of CCTV have also been suggested by the Council. In respect of the condition related to *Secure by Design*, I would agree with the appellant's contention that the wording of the condition is imprecise due to a failure to identify specific sections of the specification to be met, and have therefore omitted this condition. However, in the Council's suggested conditions, a 'Note For Applicant' has been included as a footnote to the suggested condition, setting out the specific requirements for CCTV provision on the appeal site. In this respect, I consider that these requirements should be inserted as part of the condition requiring a scheme of CCTV equipment to be installed at the site, which I consider would be required in the interests of the safety of users of the site.
36. I have also had regard to the appellant's suggestion of additional conditions related to the hours of customer access for the convenience store and hot food takeaway, and the need for details of grease traps to be submitted and approved. I consider that both these conditions would be reasonable and necessary in the interests of the living conditions of neighbouring residential occupiers, and securing acceptable drainage of the premises respectively. I have also added a condition relating to the installation and maintenance of the equipment to control smells and odours emitted from the site.

Conclusion

37. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed subject to the conditions listed.

M Seaton

INSPECTOR

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Location plan and location plan (D.2.9.12.0 rev A)
Proposed plans and elevations (D.2.9.12.1 rev J)
Proposed shop ventilation layout (EQ1408-194-01 rev B)
Proposed roof plan (D.2.9.12.2)
- 3) Prior to commencement of the development details of basic ground gas ingress measures to be incorporated into the new structure shall be provided to and agreed in writing by the Local Planning Authority.
The agreed measures shall be installed prior to the extension being brought into use.
- 4) Prior to commencement drainage plans for the disposal of surface water and foul sewage shall be submitted to and approved in writing by the Local Planning authority.
The approved scheme shall be fully implemented and retained thereafter
- 5) Prior to commencement of the development intrusive site investigation works shall be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site and submitted to the local planning authority.
In the event that the site investigations confirm the need for remedial works to treat the areas of shallow mine workings to ensure the safety and stability of the proposed development, these shall be carried out prior to the commencement of the development.
- 6) Prior to the development first coming into use the extended parking area and vehicle manoeuvring spaces shall be fully consolidated, hard surfaced and drained so that surface water run-off from these areas does not discharge onto the highway or any highway drain and all parking bays shall be clearly demarcated on the ground.
These areas shall thereafter be retained and used for no other purpose.
- 7) Prior to the construction of the development and notwithstanding the details provided, the colour, size and texture of bricks, render and roof tiles to be used in the development shall be submitted and agreed in writing by the Local Planning Authority.
The approved details shall be fully implemented and retained thereafter.
- 8) Prior to the development first coming into use, full details and location of a secure, covered cycle shelter facility for the use residents of the flats, together with full details and location cycle stand facilities for customers and staff of the shop, hot food takeaway shall be submitted to and approved in writing by the Local Planning Authority. These cycle facilities shall be fully implemented in accordance with the approved details and thereafter retained and used for no other purpose.

- 9) Prior to the development first coming into use, full details of a suitable boundary treatment around the perimeter of the site, and the car park perimeter where it abuts the public footway to prevent possible encroachment by vehicles onto the public highway, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented in accordance with the approved details prior to first use and thereafter retained.
- 10) Prior to the development first coming into use, a Servicing and Waste Management Plan, shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details of the siting and provision of all waste and collection receptacles including litter bins, details of the frequency, nature and size of the service, delivery and waste collection vehicles expected to visit the site together with details of the on-site management arrangements to allow service and delivery vehicles to safely and satisfactorily turn within the site and exit in a forward gear.

The approved scheme shall be implemented in full prior to the use starting and shall be retained thereafter and maintained in accordance with the specification.

- 11) Prior to the development first coming into use, details shall be submitted for a scheme of CCTV equipment to be installed at the site and approved in writing by the local planning authority.

The CCTV details should include the following information:

- I. Evidential standard imagery.
- II. External CCTV should be contained in vandal resistant housing.
- III. The CCTV cameras should be connected directly to a Digital Video Recorder which needs to be stored in a lockable steel cabinet to LPS1175 SR1 or STS202 BR1 standards.
- IV. CCTV images should contain time and date.
- V. A certificate from the CCTV installer should be issued to say the system installation is compliant with BS 7958:2009 Close Circuit television Code of practice.

The approved details shall be fully implemented prior to use and retained thereafter.

- 12) No demolition, construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), shall take place on any Sunday, Bank Holiday or Public Holiday, and such works shall only take place between the hours of 07.00 to 18.00 weekdays and 08.00 to 16.00 Saturdays. No plant, machinery or equipment associated with such works shall be started up or operational on the development site outside of these permitted hours.
- 13) The proposed development shall be undertaken in accordance with the conclusions and recommendations set out within the following approved technical reports.
- Design specification and extract ventilation system, prepared by Plan-It Contracts Consultancy & Design Ltd. Dated December 2014.

- Mining and mineshaft risk assessment report, prepared by JPB dated February 2014.
- Transport statement, prepared by Transport Planning Associates dated May 2015; and,
- Noise Impact Assessment, prepared by Sharps Redmore Acoustic Consultants dated June 2015.

The use of the approved development shall not commence until the recommendations within the technical reports have been implemented in accordance with the approved details.

- 14) No customer shall be permitted to be on the premises of the convenience store outside the following times: 07:00 – 23:00 and on the premises of the hot food takeaway outside of the following times: 11:00 – 23:00.
- 15) Before the use hereby permitted is commenced, details of the grease traps shall be submitted to and approved in writing by the Local Planning Authority, and installed in accordance with the approved details. The approved equipment shall thereafter be retained and maintained in accordance with the manufacturer's or installer's specification.
- 16) Before the use hereby permitted takes place, the equipment to control the emission of fumes and smell from the hot food takeaway shall be installed in accordance with the submitted and approved specifications. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.