The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 7th February 2017

Appeal Ref: APP/N4205/W/16/3162073
213 New Street, Blackrod, Bolton BL6 5AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mrs Sheetal Varsani against the decision of Bolton Metropolitan Borough Council.
- The application Ref 97251/16, dated 17 August 2016, was approved on 23 September 2016 and planning permission was granted subject to conditions.
- The development permitted is a proposed new shop front and rear dormer.
- The condition in dispute is No 2 which states that: *"The premises subject of this consent shall not be open for trade outside the following hours:- 06:00 - 20:00 Monday to Sunday".*
- The reason given for the condition is: *"To safeguard the living conditions of residents and the amenity and character of the area with regard to noise and/or disturbance".*

Decision

1. The appeal is allowed and the planning permission Ref 97251/16 for a proposed new shop front and rear dormer at 213 New Street, Blackrod, Bolton BL6 5AT granted on 23 September 2016 by Bolton Metropolitan Borough Council, is varied, by deleting condition No 2.

Application for costs

2. An application for costs was made by Mrs Sheetal Varsani against Bolton Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was granted by the Council for a new shop front and rear dormer to the appeal property. Although the application form makes reference to a rear first floor conservatory extension in the description of development, such an extension is not included in the approved plan before me. At the time of my visit, the shop front was different to the proposal indicated on the approved plan and the rear dormer had not been built. I determine this appeal based upon the plans submitted to and granted planning permission by the Council.

4. Paragraph 206 of the National Planning Policy Framework (the Framework) states that *'planning conditions should only be imposed where they are: necessary; relevant to planning and; to the development permitted; enforceable; precise and; reasonable in all other respects'*. The Government's Planning Practice Guidance (PPG) provides a table with key considerations

relating to the 6 tests listed above[1]. The PPG[2], amongst other things, also states that *'it is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls'*.

5. The appellant has indicated that the restriction imposed by condition 2 of the planning permission relating to opening hours does not meet the 6 tests listed previously. Consequently, it is requested that condition 2 is deleted.

6. The main issue is whether the disputed condition is reasonable and necessary to protect the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

7. The appeal site is a two storey mid-terraced property on the northern side of New Street that also has accommodation in its roof space. The property is currently in use as a newsagent and off licence at ground floor level, with a single storey rear extension that provides residential accommodation associated with the upper floors of the building. Surrounding terraced properties within the adjoining row and opposite are dwellings. The property has one marked on-street parking space at the front of the property in a location where New Road is otherwise subject to on-street parking restrictions. Some off street parking was evident on hardstanding fronting the terraced row at the time of my visit.

8. The planning permission granted by the Council for the new shop front and rear dormer would create additional residential accommodation within the host property at roof space level. As indicated on the approved plan, this would allow reconfiguration of the internal layout of the property, including extending the shop at ground floor level by relocating the existing kitchen to the first floor.

9. The Council have indicated that the disputed condition restricting opening hours of the premises for trade to 0600 – 2000 hours on each day was imposed to mitigate the noise impact of an extended retail unit upon neighbouring and adjoining residents. The Council have stated that the opening hours are consistent with those that were proposed by the appellant as part of the application. Although not specifically referred to in the reason for condition on the decision notice, the Council have made reference to Policy CG4 of Bolton's Core Strategy (CS), adopted March 2011. The policy seeks, amongst other things, to ensure that new development is compatible with surrounding land uses and occupiers, protecting amenity, privacy, safety and security.

10. It is my understanding that the use of the property for retail purposes, prior to the disputed condition being imposed, was not subject to planning restrictions in terms of opening hours and had been operating until 2200 hours on each day. Based on the evidence before me, the only restrictions upon the opening hours of the property, other than the disputed condition, relate to a premises licence granted under the Licensing Act 2003. The premises licence identifies opening hours of Monday-Sunday 0600-2200 and restrictions on licensable activities to Monday-Sunday 0600-2000. I consider that the restrictions on the

[1] Use of Planning Conditions, Paragraph: 004 Reference ID: 21a-004-20140306 Revision date: 06 03 2014
[2] Use of Planning Conditions, Paragraph: 001 Reference ID: 21a-001-20140306 Revision date: 06 03 2014

property imposed by the premises licence appropriately reflect a closing time in evenings after which a quieter living environment would ordinarily be expected by surrounding residents.

11. Having regard to the above, it is reasonable that the additional floorspace available to the retail unit following the development could increase the range of goods capable of being sold from the premises. However, there is no substantiated evidence before me that this would result in a significant increase in customers or an adverse impact in terms of noise generated by associated activities including the stopping and starting of vehicle engines or the opening or shutting of doors, when compared to the established use. Consequently, the evidence before me does not justify that it is reasonable or necessary to impose further restrictions on opening hours, beyond those controlled by the existing premises licence, to prevent unacceptable noise and disturbance to the occupiers of neighbouring properties, including Nos. 211 and 215 New Road to either side.

12. In reaching the above findings, I have taken into account that the Council made reference to the increase in retail floorspace offering the potential for additional services, with specific reference to a post office service application, which could result in greater customer footfall. However, at the time of my visit I observed that there is a nearby post office on the opposite side of New Road and the appellant has confirmed that the post office service application is not progressing. In any case, there is no substantiated evidence that a post office service or any other additional services would significantly increase customer footfall between 2000-2200 hours on Mondays to Sundays, i.e. the period that the disputed condition restricts opening hours beyond those in the existing premises licence. The existing post office has opening hours of 0900-1730 on Monday to Friday and Saturday 0900-1230.

13. Having regard to all of the above, I conclude that the disputed condition is not reasonable or necessary to protect the living conditions of occupiers of neighbouring properties, in terms of noise and disturbance, taking account of the Framework and the advice set out in the PPG relating to the appropriate use of planning conditions. In the absence of the disputed condition, the development would not conflict with Policy CG4 of the CS, which is consistent with the Framework in so far as it seeks a good standard of amenity for all existing and future residents of land and buildings.

14. I have considered the other conditions attached to the planning permission but there is no evidence before me that leads me to conclude that it is necessary to vary any of those. My decision alters the existing planning permission that has been granted and should be read in conjunction with it.

Other Matters

15. Representations from interested parties have raised concerns with respect to the existing parking arrangements of the property and highway and pedestrian safety, including reference to accidents. However, specific accident records relating to the locality are not before me. In any case, taking account of my conclusion on the main issue, there is no evidence before me that the development would lead to a significant increase in traffic or levels of parking demand when compared to the established use of the premises. In such circumstances, the proposal would not have an unacceptable impact on

highway or pedestrian safety when compared to the established use of the premises.

16. There is no substantiated evidence before me that the development would have an adverse impact in terms of anti-social behaviour, waste storage or waste disposal when compared to the established use. Whilst the issue of impact on property values has been raised, it is a well-founded principle that the planning system does not exist to protect private interests such as the value of land and property.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed and that the planning permission should be varied by deleting condition No 2 as set out in the formal decision.

Gareth Wildgoose

INSPECTOR