
Appeal Decision

Site visit made on 19 April 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 9 May 2017

Appeal Ref: APP/V4250/W/17/3166572

16 Clapgate Lane, Wigan WN3 6RN

- 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 CCPI Ltd against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/16/83081/CU, dated 15 September 2016, was refused by a notice dated 10 November 2016.
 - The development proposed is the change of use and alterations to form a hot food takeaway.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use and alterations to form a hot food takeaway at 16 Clapgate Lane, Wigan WN3 6RN in accordance with the terms of the application, Ref A/16/83081/CU, dated 15 September 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, 16.26-OS; Existing site layout, 16.27-P-01 Rev A; Existing Plans and Elevations, 16.27-PL-02 Rev A; Proposed Plans and Elevations, 16.27-PL-03 Rev A.
 - 3) Notwithstanding the details shown on approved drawing on, 16.27-PL-03 Rev A, before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. 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.
 - 4) Before any specified plant and/or machinery is used on the premises, it shall be enclosed with sound-insulating material and mounted in a way which will minimise transmission of structure-borne sound in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. The measures implemented as approved shall be retained thereafter.
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- 5) Customers shall only be permitted on the premises between the following hours:
0900 - 2300 Sundays - Thursdays
0900 - Midnight Fridays and Saturdays.

Procedural Matters

2. It is clear from the Council's decision and statement of case that they have no objections to the proposed alterations to the external appearance of the appeal premises. I see no reason to disagree, and I shall therefore confine my considerations solely to the proposed change of use.
3. During the application process a signed and completed S106 Unilateral Undertaking (UU) was been submitted which contains obligations to make a contribution to fund two additional litter bins and littering enforcement signage in the vicinity of the appeal site. I will return to this matter later on in my decision.

Main Issue

4. The main issue in this case is the effect of the proposal on the living conditions of neighbouring residents, having particular regard to the character and function of the area, and noise and disturbance.

Reasons

Living conditions

5. The appeal premises are located within a parade of shops, which together with the neighbouring public house, serve the surrounding residential estate. At the time of my visit three of the eight shops, including the appeal premises, were vacant. The other units comprised a tanning/beauty studio, hair dressers, two hot food takeaways and a local convenience store with a post office counter.
6. Saved Policy S1E of Wigan's Replacement Unitary Development Plan, 2006 (UDP) makes provision for hot food establishments outside of town centres and local centres, provided that, amongst other criteria, it would not unduly affect the amenity of nearby residents or businesses and would not result in an over concentrations of such uses to the detriment of amenity and/or the shopping function of the area.
7. The Council's adopted Supplementary Planning Guidance on Hot Food Establishments, 2004 (SPG) provides further advice on when an over-concentration may arise. It cites such factors as, the proximity and number of other hot food establishments, the existing character of the area, the existence of vacant shops, the function of the shops and any known amenity or community safety issues as important considerations. As a general rule it advises that no more than 33% of commercial units within a small concentration of shops should be used as hot food establishments. Exceptions would apply where the character or function of the shops would not change, or the proposal would not give rise to, or exacerbate, amenity, traffic or car parking problems for local residents.
8. The existing parade of shops, including the neighbouring public house which I noted on my visit is also open all day to serve coffee and cakes, provide a range of goods and services to meet the needs of local residents. I recognise

that an additional hot food takeaway would increase the percentage of such establishments within the parade to 37%, which is marginally above the 33% cited in the SPG as being acceptable. However, there are currently three vacant shop units available and I am not convinced that the loss of one of these retail units to accommodate a further hot food establishment would have a significantly harmful effect on the overall character and function of this local service area. Two units would still be available for retail or financial/professional service purposes. Furthermore, the existing vacant units presently detract from the overall appearance of this parade and the new use would add to the overall vitality of the area and support the local economy which is one of the National Planning Policy Framework's (Framework) core planning principles.

9. Clapgate Lane is the main estate drive which links the residential estate to Warrington Road (A49). The appeal premises are set well back from the road with a dedicated forecourt parking area in front of the whole parade of shops. The residential properties situated on the opposite side of Clapgate Lane are sited in a splayed position around the junction of Clapgate Lane and Lady Lane. A wide open area of verge provides a buffer between these properties and the road junction and consequently they are not situated facing immediately onto the appeal premises.
10. Notwithstanding local concerns regarding litter and odours, from the evidence I have before me, the existing hot food establishments do not appear to cause any substantive issues in relation to noise and disturbance to local residents. In particular, I note that there have been no objections from the Council's Business Compliance Officer subject to the impositions of a condition to restrict opening hours and to control odours. Furthermore, I note that there is support from local ward councillors which to my mind suggests that the existing business operations are not causing any significant local amenity concerns.
11. I recognise that the proposal would generate some additional activity late in the evening, particularly in connection with the public house. However, the parade of shops is not located in an area where there are many late night drinking establishments and an additional hot food establishment in this location would increase the offer available, rather than attract significantly more customers during those late evening hours. The appellant has raised no objections to a condition restricting the hours of opening to customers to those recommended in the SPG and suggested by the Council. I am satisfied that the proposed development would not cause any material harm to the living conditions of neighbouring residents, with particular regard to noise and disturbance.
12. I conclude that the proposed development would not have a harmful effect on the living conditions of neighbouring residents, having particular regard to the character and function of the area, and noise and disturbance. I therefore find no conflict with the development plan and in particular with Policy SE1 of the UDP and SPG, the aims of which are set out above. I also find no conflict with Policy CP17 of Wigan's Local Plan Core Strategy, 2013 (CS) which seeks, amongst other things, to ensure that new development is planned and designed so that it does not have an unacceptable adverse impact on amenity and quality of life.

Other Matters

13. The appeal proposal is accompanied by a signed and completed UU. It requires the appellant to make a financial contribution of £760 to fund two additional litter bins and littering enforcement signage in the vicinity of the appeal site. The support for the contributions is set out in Policy CP18 of the CS and SPG which seek to ensure that new development makes an appropriate contribution to towards the provision of public facilities and services to protect the amenity of the area. It is not clear how the Council has arrived at the sum required; however it is an amount which is well below the figure which would be required using the calculations set out in the SPG. I am however satisfied on the basis of the information provided that the requirement for litter bins and litter enforcement signage is necessary, directly related and fairly and reasonably related in scale and kind to the proposed development. The UU would comply with Regulations 122 and 123 of the Community Infrastructure Levey and I am therefore able to take it into account.
14. I have had regard to third party concerns with regard to the demand for the proposed use and impact on other businesses in the area. However these are not matters that would justify withholding permission.

Conditions

15. The Council has suggested a number of conditions which I have considered against the advice in the Framework and Planning Practice Guide. I have amended some for clarity and omitted others.
16. I have imposed a condition specifying the approved plans as this provides certainty.
17. A condition is necessary to specify the hours of opening to prevent activity late at night and protect the living conditions of neighbouring residents. Conditions are also necessary to require details of odour control and sounds insulation measures for plant and machinery to safeguard the living conditions of neighbouring residents.
18. I have not imposed a condition requiring details of the materials of external finish as these are detailed on the approved plans.

Conclusion

19. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Elizabeth Pleasant

INSPECTOR