
Appeal Decision

Site visit made on 2 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2019

Appeal Ref: APP/V4250/W/19/3232345

38 Leigh Road, Leigh WN7 1RX

- 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 and Mrs Marian & Corina Pachiu against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/19/86845/CU, dated 12 March 2019, was refused by notice dated 19 June 2019.
 - The development proposed is the change of use from a1 - shops - to a4 - drinking establishment.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance, and, highway safety.

Reasons

Living conditions

3. The appeal site comprises a ground floor unit that currently benefits from an A1 use. The site fronts onto Leigh Road and forms part of a row of properties that contain commercial premises on the ground floor and flats above.
4. There is a dispute between the parties as to whether or not the site falls within the Leigh Town Centre for the purposes of the development plan. The appellant claims that it is within it as the town centre is only approximately 400m away. However, the Council state that the site is outside of the town centre and lies on its periphery. I have not been provided with a map identifying the boundary of the Leigh Town Centre; however, as both parties consider Policy S1E to be relevant, which relates to small shops and services outside town centres and local centres, it seems clear to me that, for the purposes of the development plan, the appeal site does in fact lie outside the Leigh Town Centre.
5. Policy S1E of the Wigan Replacement Unitary Development Plan (UDP) 2006 allows the change of use to shops and other services, providing that, amongst other things, it does not unduly affect the amenity of nearby residents and businesses. To the rear of the site are residential properties. Whilst there is a

- narrow gated rear access lane dividing the appeal site and the dwellings to the rear, they are nevertheless within very close proximity of each other. Moreover, there is a first floor residential flat above the appeal property. There are also residential properties on the opposite side of Leigh Road. Consequently, due to the proximity of the site to residential properties, in particular the flat above and the properties to the rear, the occupants of these properties would be sensitive to various sources of noise and disturbance associated with the proposed use, such as music playing and people loitering and generally conversing inside and outside of the property.
6. During the evening hours, when residents should expect a reasonable level of peacefulness in the predominantly residential area, such noise and disturbance would be more discernible and could unduly disturb neighbouring residents' sleep. This would be to such an extent that it would be significantly harmful to their reasonable expectation of night-time peacefulness and their living conditions. Given the nature of the proposed use, it is likely that some patrons congregating within and around the property would be inebriated, which could increase the level of noise due to raised voices, which would exacerbate the harm caused to neighbouring residents through noise and disturbance. Furthermore, the noise and disturbance could continue after closing hours with people loitering outside or waiting to be picked up.
 7. I note the appellant's argument that the occupant of the first floor flat above the site is expected to vacate the property. However, it would remain a residential flat. My assessment is based on the effects of the proposal on existing and any future occupants of the flat, even if the tenant is the applicant.
 8. The appellant has referred me to a number of other late night uses within the locality. However, these are located much closer to the Leigh Town Centre than the appeal site, in an area where there is an expectation that some late night activities will take place. Furthermore, none of the uses referred to are for a drinking establishment. Therefore, I cannot draw any direct comparison with the proposal before me that weighs in its favour.
 9. I find therefore that the proposal would significantly harm the living conditions of neighbouring residents with regard to noise and disturbance. As such, it would be contrary to saved Policy S1E of the UDP and Policy CP17 of the Wigan Council Core Strategy (CS) 2013, which seek 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.

Highway Safety

10. The appeal site has no designated servicing or parking area and there are parking restrictions on Leigh Road by way of double yellow lines and a controlled pedestrian crossing. Therefore, the nearest available parking is on Irvine Street or Platt Street. At the time of my site visit, there was very limited parking availability, including the small parking area off Irvine Street. Whilst this was only a snapshot in time, it supports the Council's contention that during the evenings, these streets are completely full.
11. I acknowledge the appellant's argument that anyone parking on the nearby double yellow lines or within the controlled pedestrian crossing area can be dealt with by the relevant enforcing authority. Notwithstanding this, the lack of

any parking availability would likely encourage someone to park inconsiderately in such restricted places. For example, if deliveries were being made to the appeal site, which could reasonably involve heavy items such as beer barrels or crates of bottled drinks, it is likely that the delivery driver would want to park as close to the premises as possible to avoid having to carry such goods over a long distance. Given that the appeal site is relatively small, it is unlikely that the deliveries would be large. However, this could further tempt delivery drivers to park inconsiderately as the unloading time would likely be only short, as opposed to unloading a large delivery for a larger premises, and therefore their risk of being caught by a traffic warden would be reduced.

12. Such inconsiderate parking would put both drivers and pedestrians at risk as parking within the pedestrian crossing area or on the double yellow lines would limit the visibility of both road users, particularly pedestrians using the crossing and drivers wishing to pull out of the junction with Irvine Street. Furthermore, parking on the pavement could result in pedestrians having to step into the road to circumnavigate the delivery vehicle, which could result in them coming into conflict with passing vehicles.
13. I have had regard to the gated rear access service lane, which the appellant states could be used. However, it is very narrow and there is no evidence before me that service vehicles could access it.
14. I acknowledge that there has only been 1 recorded road traffic accident on Leigh Road within the last 3 years. However, the limited number of accidents does not justify the unacceptable risk to highway safety.
15. Therefore, I am not satisfied that delivery vehicles would not pose an unacceptable risk to highway safety. As such, the proposal is contrary to Policy CP7 of the CS, which seeks to ensure the provision of appropriate, well designed, convenient, safe and secure parking for cycles, motorcycles, cars, coaches and vans / lorries, including as part of new development.

Other Matters

16. The Council refer me to paragraph 91b) of the National Planning Policy Framework, which states that planning decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. However, they make no claim that the proposal would result in any increase in crime in the area. Based on the evidence before me, I find no substantive evidence to suggest that the proposal would increase crime.

Conclusion

17. Whilst the proposal would not increase crime in the locality, this is a neutral effect and does not outweigh the harm I have found with regard to the living conditions of neighbouring residents and highway safety.
18. For the reasons given above, the appeal is dismissed.

Alexander Walker

INSPECTOR