



Appeal Decision

Site visit made on 3 September 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 26th September 2019

Appeal Ref: APP/D2320/W/19/3230707

10 Babylon Lane, Adlington, Chorley PR6 9NN

- 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 Darren Tickle against the decision of Chorley Borough Council.
 - The application Ref 18/00960/FUL, dated 13 October 2018, was refused by notice dated 13 December 2018.
 - The development proposed is change of use from shop (Use Class A1) to drinking establishment (Use Class A4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is described in the application form as 'change from a A1 to A4'. However, I have adopted the description in the banner heading above from the decision notice and the appeal form in the interests of clarity.
3. There is evidence before me that the appeal premises have been operated as a Class A4 drinking establishment and that the application the subject of the appeal was retrospective. However, there is nothing before me to indicate that a Class A4 use of the premises is ongoing. In this respect, while at the time of my visit I observed that the internal works to convert the premises have been carried out, there was a sign on the door to the effect that the premises are closed until further notice. Therefore, I have determined the appeal on the basis that the proposal is a change of use and it does not relate to an ongoing use.
4. The Council's second reason for refusal relates to the submission of insufficient information to demonstrate that internal noise generation would not unacceptably impact the living conditions of adjoining residential occupiers. In his evidence, the appellant refers to an acoustic report which aims to address the concerns of the Council. However, while he did seek to submit this report, it was not accepted as it was beyond the deadline for the submission of appeal documents and no adequate reason for the late submission was provided. Therefore, the acoustic report does not form part of the evidence before me and I have not taken it into account in my determination of the appeal.

Main Issue

5. The main issue is the effect of the proposed change of use on the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

6. No 10 is a modest 2 storey mid terrace property with ground floor commercial premises and first floor office accommodation. It is at the edge of the Local Centre which extends onto the nearby A673 Chorley Road and which supports a mix of uses including shops, services, food establishments and public houses. However, notwithstanding the presence of some commercial uses on Babylon Lane, it is a predominantly residential street and there are residential properties to either side of the appeal premises.
7. The proposal is a micropub with a smoking shelter to the rear. The application form does not specify the hours of opening. However, there is evidence before me that the premises are licensed to sell alcohol until 23:30 hours on Sundays to Thursdays and until 00:00 hours on Fridays and Saturdays, and the licence also allows the playing of recorded and live music late into the evenings.
8. The Local Centre would be expected to be a vibrant and busy area. However, and irrespective of some late night uses, activity would be likely to be greatest during daytime retail hours. At other times, including weekday evenings and Sundays, there would be a reduction in footfall and traffic in the surrounding area with a consequent reduction in background noise. The extended opening hours of the appeal scheme and the nature of the proposal would therefore result in an increase in noise and activity in and around the premises at otherwise quieter times when residential occupiers might reasonably expect to enjoy their homes free from significant noise and disturbance.
9. There are party walls between No 10 and the adjoining properties, although the ground floor appeal premises are separated from No 12 by a passageway leading to the rear of the terrace. The increased frequency, duration and intensity of noise associated with a drinking establishment in this location, including the playing of music and the voices of a potentially large number of people, would be materially different to that associated with a retail use of the premises. However, and as explained above, there is no evidence before me to demonstrate that the internal noise generated by the proposed change of use would not unacceptably disturb the occupiers of the adjoining residential properties or the offices above the premises.
10. The smoking shelter to the rear of the premises would be in close proximity to the rear windows and rear gardens of the adjoining residential properties, and No 8 Babylon Lane in particular. The extended opening hours of the premises would potentially result in use of the smoking shelter every day until late at night. The noise and cigarette smoke associated with its use by a potentially large number of people over long hours would be detrimental to the living conditions of nearby residential occupiers, both within their homes and using their gardens.
11. The parties have discussed the possibility of removing the smoking shelter. However, it is part of the appeal scheme before me and no amended plans have been submitted with the appeal that demonstrate an alternative proposal. Moreover, while its removal would avoid impacts on the rear-facing windows and gardens of nearby residential properties, there would be a consequent increase in activity on Babylon Lane. Given the close relationship of the appeal premises to neighbouring properties, people congregating to smoke to the front of the premises would inevitably also be in close proximity to residential dwellings. Therefore, whether to the front or the rear of the premises, the

associated noise and disturbance, particularly at otherwise quieter times, would be detrimental to nearby residents.

12. I appreciate that the appellant is aiming to attract mature customers and that he considers that the premises could be operated to minimise disturbance. However, no substantive evidence has been provided with the appeal to demonstrate that a drinking establishment in this location could be operated without adversely affecting the living conditions of nearby residents. In any case, I am required to be mindful of the proposal over its lifetime. In this respect, there could be no guarantee that future operators would similarly aim to attract a mature and responsible clientele or that future customers would be mindful of the surrounding residential uses.
13. I have considered whether the harmful effects of the proposed change of use could be mitigated through planning conditions. However, in the absence of an acoustic report, I cannot be certain that conditions requiring measures to mitigate internal noise would be either necessary or reasonable in order to protect the living conditions of nearby residential occupiers. Moreover, it would not in any case be possible to mitigate the noise and disturbance resulting from the increased comings and goings and activity around the appeal premises, particularly late at night.
14. Therefore, the proposed change of use would result in significant harm to the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance. It would conflict with Policies EP9 and BNE1 of Chorley Local Plan 2012-2026 Site Allocations and Development Management Policies Development Plan Document Adopted July 2015. These require, among other things, that proposals do not harm the amenity of the area and do not cause an unacceptable degree of noise disturbance to surrounding uses.
15. My attention has been drawn to policies in the National Planning Policy Framework (the Framework) that relate to planning for community facilities, including public houses. However, it has not been demonstrated that a drinking establishment in this location would contribute to the sustainability of the area. Moreover, compliance with some policies in the Framework, or the development plan, would not be an additional benefit of the scheme and would not outweigh the conflict with the development plan that I have found.

Conclusion

16. For the reasons set out above, and having regard to all other matters including support, the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR