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## Appeal Decision

Site visit made on 10 September 2019

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector, appointed by the Secretary of State**

**Decision date: 4 October 2019**

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**Appeal Ref: APP/P2365/W/19/3223337**

### **1 The Common, Parbold WN8 7DA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mrs Geraldine Unsworth against the decision of West Lancashire Borough Council.
  - The application Ref 2018/1192/FUL, dated 20 November 2018, was refused by notice dated 24 January 2019.
  - The application sought planning permission for change of use of first floor to provide additional seating for the ground floor cafe without complying with a condition attached to planning permission Ref 2018/0561/PNC, dated 12 July 2018.
  - The condition in dispute is No 3 which states that: The use hereby permitted shall only take place between the hours of 08:00 to 18:00 Monday – Thursday, 09:00 to 20:00 Friday and Saturday and 09:00 to 17:00 Sunday and Bank Holidays.
  - The reason given for the condition is: To safeguard the amenity of adjacent properties and the area generally and so comply with the provisions of Policy GN3 and EN4 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. The original condition limiting the hours of use was imposed on the Council's decision that prior approval was not required in relation to the change of use of first floor to provide additional seating for the ground floor café. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) makes no provision for conditions to be attached in such circumstances unlike in cases where prior approval is required and subsequently granted. However, the Council has dealt with the application to alter those hours under section 73 of the Act and I will deal with the subsequent appeal on the same basis.
3. The appellant's planning statement sets out that the application is to vary the hours of operation of the premises to 22:00 for provision of food and alcohol and 22:30 for the close of the premises. However, the application form requests hours of operation of 08:00 hours to 22:00 hours. The Council has dealt with it the application on this basis and so shall I.

### **Background and Main Issue**

4. The appellant is seeking to vary the hours of operation for the premises to enable her to operate between 0800 hours to 2200 hours Monday to Sunday.

The main issue of the appeal is therefore the effect of varying condition 3 on the living conditions of nearby residents, with particular reference to noise and disturbance.

## Reasons

5. The appeal site comprises a red brick building located at the end of a cul-de-sac, adjacent to a block of retirement flats known as Beacon Crossing. A number of those flats, in Block 1, on the northern elevation<sup>1</sup>, face towards the appeal site. The building is currently used as a café with outdoor seating provided to the front. There is an external staircase to the front of the building which provides fire escape and a balcony area at first floor. Parking is located to the front of the building, adjacent to the windows of a number of the retirement flats. The premises has a licence to operate between 9:00 to 22:30 Monday to Sunday, with the sale of alcohol restricted to between 12:00 and 22:00. There are a small number of other commercial uses in the cul-de-sac.
6. Policy GN 3 of the West Lancashire Local Plan 2012-2027 Development Plan Document<sup>2</sup> (DPD) seeks to ensure that proposals for development retain or create reasonable levels of amenity, amongst other things. I have been provided with no substantive evidence regarding ambient noise levels within the cul-de-sac, or levels of noise which would be likely to be generated by the appeal site. The proposed hours of operation would enable the premises to operate until 2200 hours Monday to Sunday, a time when occupants of the retirement flats could reasonably be trying to sleep and when ambient noise levels are likely to be lower.
7. Although occupancy of the appeal site is limited to 60, even relatively small groups leaving the premises would have the potential to generate noise such that it would cause disturbance to occupants of neighbouring properties. Whilst it would be possible to control by condition the generation of noise within the building and restrict use of the balcony area and outside steps, the appellant would have no control over the noise generated by patrons of the premises once they have left the building. Given the close proximity of some of the bedrooms on the northern elevation of Beacon Crossing to the appeal site, I consider it highly likely that noise generated by patrons leaving the appeal site would cause disturbance to residents, particularly during the summer months when occupants of the nearby bedrooms may choose to open their windows.
8. Furthermore, vehicles parked outside the premises would be likely to utilise their headlights which would be likely to shine into the adjacent bedrooms at Beacon Crossing. Whilst I saw that these parking spaces are not restricted, increasing the hours of operation of the appeal site would significantly increase the likelihood that vehicles would access and egress the cul-de-sac at times when occupants of the flats are trying to sleep. Whilst the station car park is adjacent to Beacon Crossing, the bedrooms facing towards the appeal property are unlikely to be directly affected by vehicles using the station car park since they are orientated away from the car park.
9. Although there are other uses within the cul-de-sac which could generate noise and disturbance, their opening hours are shorter than those proposed through this appeal. Furthermore, given the nature of the other businesses within the

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<sup>1</sup> As shown on drawing 1731/24 submitted with the Council's Statement of Case

<sup>2</sup> Adopted October 2013

cul-de-sac, which include a butchers, beauticians and a barbers, noise generated by visitors to these premises is likely to be lower compared with the appeal site since they would be less likely to enter and exit in groups.

10. I acknowledge that there are other sources of noise in the wider area. However, those uses which could give rise to noise which front onto Station Road, including the Railway Public House and The Old Post House, are some distance from the appeal site and are therefore unlikely to significantly affect the living conditions of residents of Beacon Crossing.
11. Although the railway line is a short distance from Beacon Crossing, the bedrooms facing the appeal site are oriented away from the railway line and are therefore unlikely to be significantly affected by noise from trains travelling along it. Furthermore, the flats are set back from the road. I would therefore expect, during the evening, the appeal site would be the dominant source of noise experienced by those occupants of Beacon Crossing whose bedrooms face towards the appeal site.
12. The appellant asserts that there have been no complaints regarding noise at the premises since it opened. However, a lack of complaint to date is not an indicator that there would be no harm to living conditions arising from increased hours of operation.
13. Thus, for the reasons given above, I conclude that the variation proposed would harm the living conditions of nearby residents, contrary to Policy GN3 of the DPD, the requirements of which are set out above, and the appeal should therefore be dismissed.

### **Other Matters**

14. Notwithstanding the appellant's assertion that the appeal relates to the whole of the premises, the section 73 application related to the change of use of first floor to provide additional seating for the ground floor café. Although there is an external staircase, the appellant asserts that it is used as a fire exit and would not provide access to the first floor. Patrons of the café would therefore have to access the first floor via an internal staircase. Thus, even if I were to vary the condition, the appellant would therefore still be bound by any restriction applying to the ground floor. The appellant suggests that this could be resolved by a further application to consolidate the hours for both the ground floor and first floor. However, I have no such proposal before me and am therefore unable to take this into account.
15. Concern has been raised about the Ward Councillors, Parish Council and Council's lack of engagement with the appellant during the processing of the application. However, in determining the appeal I can only have regard to the planning merits of the case, so am unable to give any weight to this particular concern.

### **Conclusion**

16. For the reasons given above, I conclude that the appeal should be dismissed, and the condition retained in its present form.

*M Savage*

INSPECTOR