



Appeal Decision

Site visit made on 16 December 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th January 2020

Appeal Ref: APP/B2355/W/19/3238246

Orient One, New Hall Hey Road, Rawtenstall, Rossendale BB4 6AJ

- 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 Adeel Saleem against the decision of Rossendale Borough Council.
 - The application Ref 2019/0141, dated 27 March 2019, was refused by notice dated 3 September 2019.
 - The development proposed is for the Change of use from retail (Use Class A1) to restaurant / banqueting hall / wedding venue / events venue (Sui Generis), change of use of land to form car park extension and installation of new windows and door screens.
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Decision

1. The appeal is allowed, and planning permission granted for the change of use from retail (Use Class A1) to restaurant / banqueting hall / wedding venue / events venue (Sui Generis), change of use of land to form car park extension and installation of new windows and door screens at Orient One, New Hall Hey Road, Rawtenstall, Rossendale BB4 6AJ, in accordance with the terms of application Ref 2019/0141 dated 27 March 2019, and subject to the conditions within the attached schedule.

Application for costs

2. An application for costs was made by Mr Adeel Saleem against Rossendale Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. Amended plans were submitted during the application consideration process, to remove a mezzanine floor. Therefore, although the appellant has indicated on section E of the appeal form that the description has not changed, the revised description is also provided in this section. Consequently, I have omitted reference to the mezzanine from the description of development. The amended plans were subject to re-consultation at the time and I therefore have taken them into account in my decision. I am satisfied that no party would be prejudiced by my doing so. Furthermore, it is noted that the "extension to car park", referred to in the description, relates only to the two-bay coach park and delivery area.
4. I have used the address stated on the appeal form and the Council's Decision Notice as this more accurately describes the site.

Main Issues

5. The main issues are:

- the effect of the proposal on highway safety with regard to on-street parking, and
- the effect of the proposed use on the living conditions of existing residents, with particular regard to noise and disturbance and light pollution from vehicles.

Reasons

Highway safety

6. The building on site was formerly used for retail and office use. The site includes a car park, with around 125 spaces, with access through the adjacent mixed-use development and also directly onto New Hall Hey Road. The site is adjacent to a number of further commercial uses and the East Lancashire Railway line and station. On my visit, in the day-time, I observed around a third of the car park was occupied although the building was vacant. The car park is therefore used as over-spill parking from adjacent activity. I also observed that 'no parking' restrictions are in place around the junctions to Foundry Street and Holme Bank. I also observed that significant unrestricted parking was available on New Hall Hey Road.
7. The Development Plan for the district includes the Rossendale Borough Council - Core Strategy Development Plan Document 2011-2026 (CS) (2011). Policy 1 and 9 seek to minimise negative impacts of development on existing infrastructure capacities and concentrate new development close to main public transport corridors. The National Planning Policy Framework (The Framework) states that development should only be prevented or refused on highway safety grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
8. The County's Highway Engineer initially found¹ that a proportional application of the 'Eastern Pavilion' survey identified that the proposal would result in on-street parking. However, the appellant then revised the scheme, and this resulted in the Highway Authority subsequently supporting the proposal². Accordingly, parking provision was deemed to be appropriate for the scale of the use. This conclusion is an important material consideration and carries substantial weight in favour of the proposal.
9. Furthermore, the previous Inspector³ was broadly satisfied with the level of parking provision. He identified that the proposal would generate a similar level of traffic as the lawful A1 retail use. He also found that the Council had failed to establish where local hazardous parking could take place to the detriment of highway safety. I see no reason to disagree with these findings. Furthermore, since this decision was made the revised scheme has removed the car park extension and the mezzanine. The mezzanine would have generated a greater car parking requirement (of around 70 spaces) than was provided by the proposed car park extension (being around 56 spaces). Consequently, the

¹ County Highway Engineer letter – 30 May 2019

² Email from highway engineer – 2 August 2019

³ Planning Appeal Reference: APP/B2355/W/18/3209084

reduced floor area of the proposal would now have an increased capability to accommodate the car parking needs generated by the proposed use.

10. The Council has again provided insufficient explanation to identify how on-street parking would be harmful to highway safety even if it were to occur. The Council has also not identified which junctions would be affected, where the highway network is at capacity or would be in danger of being harmed. The site is also accessible to alternative forms of transport such as the nearby railway station, bus services and the town centre. Existing parking restrictions seem appropriate to prevent parking around key local junctions. Also, as identified by the County Highway Engineer, further parking restrictions could be applied if required in the future.
11. Consequently, any limited on-street parking would be unlikely to result in an unacceptable impact on highway safety. I am unconvinced that any on-street parking would be in hazardous locations or result in an adverse impact on highway safety. Therefore, although I recognise that the Council considers that the 'Eastern Pavilion' survey was flawed and would result in greater on-street parking than anticipated, this is contrary to the conclusions drawn in the previous appeal decision and the comments of the Highway Engineer. I have no compelling evidence to set aside these conclusions.
12. Accordingly, the proposal would comply with policies 1, 9 and 24 of the CS, which seek development to make the best use of under-used, vacant and derelict land and buildings, be close to main public transport corridors or a bus stop and address parking and servicing issues. Furthermore, the proposal would accord with the Framework that requires development to only be refused if it would result in an unacceptable impact on highway safety.
13. However, policy 23 of the CS in regard to promoting high quality design is not relevant in issues of highway safety.

Living conditions

14. The officer report explains that the hours of use would be 12:00-17:00 and 19:00-23:00 daily. The proposed use would have a function room that would accommodate up to 600 customers. In regard to noise impacts, the nearest residential properties are within Railway Terrace. One Railway Terrace is around 15 metres from the proposed coach parking bays. Other nearby dwellings are opposite the site accessed via the small culs-de-sac of Foundry Street and Holme Bank. However, the area is predominantly commercial in character. This includes a car dealership, some small industrial uses and a public house within 'Station House'. I therefore anticipate that ambient noise levels would be relatively high in the daytime with a diminished but still active level of noise in the evenings.
15. The previous appeal decision noted ambient noise levels would be lower in the evenings. The Inspector considered that noise would be especially invasive to occupiers of Railway Terrace in the summertime when windows would be open for ventilation. The proposed car park to the rear of Railway Terrace was omitted from the current proposal to address these concerns.
16. The Council's concern relates to noise from the building, garden area, car park and coach parking area and parking of visitors in local roads. The use of the coach parking area would be audible by the nearest residential occupiers of

Railway Terrace. This would most likely be noticed in the evenings when background levels are lower. However, the noise of coaches starting and moving to the front of the building would be limited in duration and unlikely to be sustained.

17. The Council's Environmental Health Officer raised no objection to the proposal subject to the imposition of conditions including in regard to operational hours and delivery hours. This is an important material consideration and carries significant weight in favour of the scheme. Conversely, limited evidence has been provided by the Council to indicate how noise sources would significantly affect adjacent living conditions contrary to this advice.
18. Representations have suggested that the building has inadequate sound proofing. However, I observed on my visit, that the building is of solid and permanent construction. I therefore see no reason why it would fail to contain reasonable and expected noise levels associated with the proposed use. The noise effects identified within the Council's reason for refusal principally relate to vehicle sounds and customers walking to and from their cars. However, this type of activity could already largely occur on site in mind of its lawful use. Therefore, whilst I have been mindful of the concerns raised by local residents and the Council, I find that noise levels from the areas identified to be unlikely to be invasive or sustained.
19. Furthermore, the proposal may occasionally result in over-spill car parking on local highways. This could cause some noise disturbance when attendees return to their vehicles in the evening. However, this would be most likely to take place on New Hall Hey Road adjacent to commercial and industrial uses. In this context, existing through traffic would already cause noise effects. The Council has failed to identify why the proposal would result in a discernible increase in noise levels. Consequently, associated noise levels of cars starting in the evening, would be unlikely to be frequent or sustained. The proposal would not therefore be demonstrable harmful to the living conditions of nearby residents through noise effects.
20. In terms of light pollution, the car park is adjacent to commercial and industrial uses, the railway line and the highway. The highway includes some low-level street lighting and commercial activity. It would therefore be a relatively well-lit area in the evenings. The Council has not offered sufficient explanation as to how or which residents would be harmed by the effect of headlights of vehicles using the car park or the highway. Furthermore, the Council has not adequately explained how this would be substantially different from the lawful use of the site. There are no residential properties directly adjacent to the appeal site. Furthermore, opposite the site only 1 Holme Bank has windows that directly overlook the car park. This dwelling fronts onto New Hall Hey Road. Occupiers of this dwelling would already experience light pollution from passing vehicles and streetlights and would therefore be largely accustomed to evening activity. Also, this property overlooks a section of the car park that has boundary landscaping. Consequently, occupiers of this dwelling would be unlikely to be directly affected from car headlights.
21. Occupiers of other nearby dwellings would be less affected by light pollution from the activity associated with the proposal. Coaches may cause some limited light pollution when manoeuvring in the car park close to the rear of Railway Terrace. However, these effects would be slight and limited.

22. On-street parking would be likely to be limited to New Hall Hey Road. Such parking and manoeuvring would be unlikely to be readily distinguishable from other road users. In any event, this would not result in harm to adjacent residential occupiers. As a consequence, on-site and on-street manoeuvring of vehicles in the evening would be unlikely to cause light spill disturbance to nearby residents. Furthermore, I have found that the proposal would be likely to accommodate most parking needs within the site. This would lessen the potential effects of the proposal on the living conditions of occupiers of neighbouring dwellings. Therefore, putting these points together, it is unlikely that the living conditions of local residents would suffer substantial noise disturbance or light-spill from activity associated with the use.
23. As such, the proposal would accord with policy 24 of the CS which seeks amongst other things for development to protect the amenity of an area including by mitigating noise and light pollution. Furthermore, the proposed use would satisfy the Framework which seeks to mitigate noise impacts and create places with a high standard of amenity for existing and future users.

Other matters

24. I have paid particular regard to the many letters and emails of objection from the local community. I have been mindful of the concerns raised, especially in regard to noise and disturbance in the evenings.
25. Representations from operators of the East Lancashire Railway and others have identified the usefulness of the car park for over-spill visitors. Nevertheless, no evidence has been submitted to show that any party has a lawful claim to the use the car park beyond the owner. The operators of the railway anticipate negative financial and employment impacts from the loss of car parking. However, the Council has not identified that the site is allocated for tourism use or that its loss would be contrary to tourism objectives of the Plan. The site is therefore deemed to be available for alternative development and use. Therefore, although the car park is of benefit to visitors and other local users, the site is privately owned and could be closed from public use without recourse.
26. In correspondence residents have drawn attention to current difficulties experienced in preventing noise disturbance caused by delivery vehicles. I have taken these concerns into account, although they do not relate specifically to the proposal.
27. Representations have also compared the proposal to another wedding venue at 'Eastern Pavilion'. These assert that the existing venue results in over-spill parking on local roads and is associated with anti-social behaviour. However, I am unconvinced that these issues would manifest or be a result of the proposed use. Noise complaints made against 'Eastern Pavilion' cannot be directly or reasonably correlated to the proposal. These matters relate to a different venue, and I have limited detail in regard that business in terms of its context, planning history or its licensing arrangements. Furthermore, the imposed conditions on the appeal proposal and its licencing requirements would regulate the use to within acceptable parameters. These would prevent significant noise that might otherwise affect the living conditions of local residents. A condition preventing the use of fireworks would not pass the relevant test of the Framework as being reasonable or directly relevant to the development.

28. The Council has not referred to any policies that seek to retain the retail use. Furthermore, the site is slightly separate from the main retail core of the town and is therefore open to alternative use. Also, the building appears to have been vacant for some time. As such, there appears to be limited interest in the site from retailers.
29. Representations have raised concerns that the proposal would have an impact on local business, through traffic congestion, resulting in a loss of trade. However, the evidence does not support this assertion and indicates that the majority of parking would take place on site.
30. Representations were made to the effect that the rights of several local residents, under the Human Rights Act 1998, Article 1 of the First Protocol and article 8, would be violated if the appeal were allowed. I do not consider this argument to be well-founded. I have found that the proposed development would not cause unacceptable harm to the living conditions of local residents. Therefore, the degree of interference that would be caused would be insufficient to give rise to a violation of the qualified rights under Article 1 of the First Protocol or Article 8.
31. Concerns raised relating to existing traffic congestion and a general lack of public parking in the town have only a limited bearing on the proposal which must be judged on its own merits. Concerns in regard to the effect of the proposal on the character and appearance of the area were fully addressed in the previous Inspector's decision. Representation have also objected on the basis that the area has a lack of hotel accommodation to accommodate attendees. This is not relevant to the main issues and is unsupported by any substantive evidence.

Conditions

32. I have considered the use of conditions in line with the Government's Planning Practice Guidance. The Council's suggested conditions in regard to the timeframe for commencement of development and the approved plans have been applied in accordance with the Guidance. The Council has suggested 14 further conditions, I have included many of these. I have adapted the wording where necessary to comply with the Framework and for clarity. I have altered the trigger point for details to be submitted for landscaping and removed its reference to dwellings.
33. The impact of noise to living conditions would be limited through the imposition of conditions that would limit the hours of use, delivery hours and for there to be no outdoor sound amplification. I have also made a minor adjustment to the Council's suggested landscaping condition. This requires details of the enclosure around the garden area as this would further reduce noise effects in the interests of nearby residents' living conditions.
34. I have removed the tailpiece in regard to the condition preventing a mezzanine to be installed. To agree its addition by condition would deprive third parties of the chance to comment on such a revision. However, I am satisfied that such a condition is otherwise reasonable and necessary to limit the area that benefits from the approved use. Furthermore, the amended plans show that the second function room is removed, and the space revised to be an ante room in support of the main hall. This would prevent a second function taking place at the same time in combination with condition 13. Smell nuisance concerns would be

adequately mitigated through the use of an extraction system, details of which are required by condition 5.

35. Consequently, I have applied the conditions that are necessary and reasonable. Conditions have therefore been applied in the interests of certainty (1 and 2), to safeguard the character and appearance of the area (3 and 15), in the interests of highway safety and to maximise the efficient use of the car park (9, 10, 12, 13 and 14), in the interests of sustainable transport objectives (8) and to protect the living conditions of existing residents (4, 5, 6 and 7).

Conclusion

36. For the above reasons, the appeal is allowed, and planning permission granted.

Ben Plenty

INSPECTOR

Schedule of 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 and details: Location Plan (Drawing Number 2771/AL/3000E, Proposed Site Plan and Location Plan (Drawing Number 2771/AL/3005F), Proposed Ground Floor Layout, North, South, East and West Elevations, (Drawing Number 2771-AL-3002-E), Existing First Floor Plan (Unaltered) (Drawing Number 2771-AL-3003-E) and Existing and Proposed Roof Layout (Drawing Number 2771-AL-3004-E).
- 3) Prior to the commencement of use, full details of all proposed hard and soft landscaping (including planting) and boundary treatments, including to enclose the garden area, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details. All boundary treatments shall be erected prior to the commencement of use. All planting shall take place before the commencement of use or in the next planting season following first occupation. Any plants that are removed, die or become diseased within five years from the date of planting shall be replaced by plants of the same size and species in the following planting season.
- 4) The facility hereby permitted shall only be open to members of the public during 10:00 – 23:00 hours daily.
- 5) Prior to the commencement of use, full details of the proposed extraction and odour control system to serve the kitchen shall be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be installed prior to the use commencing in accordance with the approved details. The approved extraction / odour control system shall be in operation whenever food is being prepared and shall be maintained in perpetuity.
- 6) No sound amplification equipment shall be installed or used on the building or within any external areas of the site at any time.
- 7) Deliveries to and from the site shall only take place between 08:00 – 20:00 hours daily.
- 8) Prior to the commencement of use, an electric vehicle charging point shall be installed and made available for use within the car park. The charging point shall be retained and maintained thereafter.
- 9) Prior to the commencement of use, a Car Park Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall be generally in accordance with the document submitted with the application entitled 'Design, Access, Waste Management, Transport and Planning Statement' and it shall include that on any day that 500 guests or more are anticipated at the venue, car park attendants shall be deployed to ensure the effective operation of the car park and site access. The development thereafter shall be carried out in accordance with the approved Management Plan.
- 10) Within 3, 6 and 12 months of first occupation of the development site, reviews of the Car Park Management Plan shall be submitted to the LPA

for approval. This shall include contact details for the car park manager and any amendments made to the Management Plan as deemed necessary by the Local Planning Authority. Should any of the reviews demonstrate that in the interests of highway safety current waiting restrictions in the vicinity of the site need to be amended, then the applicant shall submit to the Council a scheme for approval to secure the required changes via traffic regulation order or any other mechanism as appropriate. The amended Car Park Management Plan shall thereafter be implemented in accordance with the approved details.

- 11) There shall be no car parking in the area of the site edged blue on the Site Location Plan (dwg no 2771/AL/3005F) at any time.
- 12) No enlargement by way of extension or installation of a mezzanine floor shall be carried out without express planning permission first being obtained. The development shall be carried out in strict accordance with the Proposed Ground Floor Layout, North, South, East and West Elevations (Drawing Number 2771-AL-3002-E) and members of the public shall not have access to the first-floor.
- 13) No more than event may take place at a time. Where multiple events are booked on the same day, those events shall be staggered to ensure a period of not less than 1 hour occurs between the start and finish times of each event. The appointment book / system setting out the times of the events shall be made available to view by the Council on request.
- 14) No development shall take place until a scheme for the provision, arrangement and operation of signage and barriers within the car park and at the unnamed sett-paved road leading to Station House has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to the first trading of the venue. Notwithstanding the above, the car parking areas detailed on the approved plans shall be provided and made available prior to first use of the facility hereby approved and shall be retained thereafter for the sole use of customers and staff of the facility hereby approved.
- 15) Notwithstanding the details shown on the submitted drawings, all new window and door units shall be finished black in colour. All renovated windows and doors on the building shall also be coloured black.

End of Schedule