
Appeal Decision

Site visit made on 6 October 2020 by C McDonagh BA (Hons) MA MRTPI

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2020

Appeal Ref: APP/D2320/W/20/3255316

The Little Inn on the Park, 4 Hallgate, Chorley PR7 1XA

- 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 Ms Wendy Boyd against the decision of Chorley Borough Council.
 - The application Ref 20/00208/FUL, dated 28 February 2020, was refused by notice dated 9 June 2020.
 - The development is mixed use A3/A4.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms Wendy Boyd against Chorley Borough Council. This application is the subject of a separate Decision.

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

4. The officer report indicates that the mixed A3/A4 use of the premises had commenced prior to the submission of the planning application. This is alongside representations from a local resident also indicating that such uses are taking place. However, there is nothing in the evidence which confirms that the mixed A3/A4 use of the premises is ongoing and nor did I observe anything at my site visit which confirms this. Therefore, whilst the decision notice refers to the proposal as being retrospective, I have assessed it on the basis that the mixed A3/A4 use is a proposed use for the appeal property.
5. The application form does not specify the opening hours of the proposed use. The officer report indicates that these are proposed to be 12 midday to 11pm Monday – Saturday and 12 midday to 5pm on Sunday. I have proceeded on this basis. I note that a licence for indoor performances of live and recorded music and for the sale of alcohol (indoors and outdoors) has been granted for different hours. However, that is a separate consent regime and I have assessed the proposal on the basis of the opening hours in the officer report.
6. I note the appellant disputes the relevance of Policy BNE1 of the Chorley Local Plan Site Allocations and Development Management Policies Development Plan

Document (2015) (LP). Whilst not all parts of the policy relate directly to the appeal proposal, it aims to ensure that development does not cause an unacceptable degree of noise and disturbance to surrounding land uses. The policy is relevant to the development before me and I have given it full weight in my assessment of the appeal.

7. The Council has confirmed that the reference to Policy EP9 in the decision notice is an error and should have referred to Policy EP7 which deals with proposals in District and Local Centres. The appellant has commented on the implications of this in their final comments and I have taken LP Policy EP7 into account in my assessment of the proposal.
8. On 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. The Regulations rationalise the system of Use Classes and in doing so have established a new broad 'commercial, business and service' use class (Class E). However, Regulation 4 provides that the appeal is to be determined by reference to uses or use classes specified in the Schedule to the Use Classes Order as at 31 August 2020. Both parties were invited to comment on the implications of the amendment, and I have had regard to the comments received from the appellant in reaching my decision.

Main Issue

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

Reasons

10. No.4 Hallgate is a ground floor commercial unit within the Hallgate District Centre. It is flanked to either side by a pharmacy and convenience store while there are maisonettes at first floor level.
11. As a defined District Centre, the area in the vicinity of the appeal site would be expected to be a busy and vibrant area. However, activity from customers visiting the retail units would be greatest during daytime retail hours. During the evenings there would be likely to be a reduction in customer numbers visiting the adjoining retail premises and therefore less activity and noise and disturbance in the vicinity of the appeal site.
12. The mixed A3/A4 use would represent a more intensive use of the unit compared with the existing A3 use and has the potential to generate an increased number of customers going to and from the premises. The noise and disturbance associated with this activity together with customers using the outdoor area would be audible outside the premises, in proximity to the dwellings above the unit. The A4 element of the proposed use would also be likely to be more dependent on trade during the evening hours, when the occupiers of the dwellings above could reasonably expect to enjoy their homes free from significant levels of noise and disturbance.
13. While I appreciate alcohol may have been served at the premises under previous uses, the process of issuing a licence is unrelated to a planning application. Moreover, there is no evidence before me, such as an acoustic report, to demonstrate that the internal noise from the mixed A3/A4 use

would not harm the living conditions of the occupiers of the dwellings above, despite the moving of the bar towards the rear of the building.

14. In accordance with paragraph 54 of the National Planning Policy Framework (the Framework), I have considered whether a condition could be imposed to secure appropriate acoustic mitigation for the proposed development which would minimise the likelihood of noise and disturbance for adjoining occupiers. However, in the absence of any further details or any indication that any such scheme would be effective, such a condition would fail to meet the tests for conditions set out in the Framework and the Planning Practice Guidance. Furthermore, even if this were to mitigate noise impacts from inside the bar area, it would not lessen the disturbance from people outside the premises, of which the appellant agrees they would have little control.
15. Policy EP7 supports the granting of permission for A1, A2, A3 and A4 uses which support the role and function of District and Local Centres. Regardless, and notwithstanding this in-principle policy support, the development is still subject to assessment against other policies within the Development Plan.
16. With this in mind, and to conclude on the main issue, the change of use to mixed A3/A4 use would be materially different from the existing A3 use and would result in material harm to the living conditions of the occupiers of dwellings above the appeal premises due to increased noise and disturbance. It would therefore be in conflict with LP Policy BNE1 of the Chorley Local Plan Site Allocations and Development Management Policies Development Plan Document. This requires, among other things, that proposals do not cause an unacceptable degree of noise disturbance to surrounding land uses
17. I acknowledge that there would be economic benefits to the change of use through the creation of jobs and increased revenue from the business which would be particularly beneficial in the current economic climate. These weigh in favour of the proposal. However, there would be material harm to the living conditions of the occupiers of adjoining properties through increased noise and disturbance and conflict with the development plan. In my view, the benefits of the scheme would not outweigh the harm arising from the adverse effect on living conditions and the conflict with the development plan. There are no material considerations in this case to justify a decision other than one in accordance with the development plan.

Recommendation

18. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

C McDonagh

APPEAL PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Sarah Housden

INSPECTOR