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## Appeal Decision

Site visit made on 17 November 2020

**by Sarah Manchester BSc MSc PhD MEnvSc**

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

**Decision date: 8<sup>th</sup> December 2020**

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**Appeal Ref: APP/N4205/W/20/3258669**

**69 Thicketford Road, Bolton BL2 2LS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr M Ahmed against Bolton Metropolitan Borough Council.
  - The application Ref 07890/20, is dated 20 February 2020.
  - The development proposed is change of use of ground floor from Retail (Class A1) to café (Class A3) including outdoor seating at front together with alterations to shopfront, erection of staircase at rear and self-contained flat to first floor.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from Retail (Class A1) to café (Class A3) including outdoor seating at front together with alterations to shopfront, erection of staircase at rear and self-contained flat to first floor, in accordance with the terms of the application Ref 07890/20, dated 20 February 2020, subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Ref A101 rev P1, Location and Site Plan, dated 13.02.2020; Ref A103 rev P1, Proposed Floor Plans, dated 13.02.2020; Ref A104 rev P1, Proposed Elevations, dated 13.02.2020.
  - 2) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 3) The premises shall not be open for customers, and no deliveries or collections shall be made, outside of the following hours: 1000 - 1800 Mondays - Sundays.
  - 4) The occupation of the dwelling shall be limited to the owner of the business or a family member or person solely or mainly employed in the business occupying the plot edged red on the attached plan. The flat shall not be occupied as a separate unit of residential accommodation.

### Application for costs

2. An application for costs was made by Mr M Ahmed against Bolton Metropolitan Borough Council. This application is the subject of a separate Decision.

### Procedural Matter

3. The name of the applicant in the application form does not correspond to the name of the appellant in the appeal form. The appellant's agent has confirmed that the appeal should proceed in the name given in the application form.

4. The Council failed to determine the application within the prescribed time limits. Although there is no formal decision on the application, in its evidence the Council has indicated that had it been in a position to determine the application it would have granted permission subject to conditions.

### **Main Issue**

5. Therefore, I consider the main issue in this appeal to be the effect of the proposal on the living conditions of nearby residential occupiers.

### **Reasons**

6. No 69 is a 2 storey terraced property with vacant ground floor commercial premises and first floor living accommodation. The first floor is accessed internally from, and it shares a ground floor kitchenette and storage area with, the commercial premises. The terrace of which No 69 forms part is largely in ground floor commercial uses, including retail and food uses. The wider area is predominantly in residential use and there is a care home and health centre on the opposite side of the road.
7. The proposal is a ground floor coffee and sandwich bar with indoor seating and outdoor seating provided in the small enclosed yard area to the front of the property. There would be a new commercial frontage. The first floor would be converted to a self-contained 1 bed flat, with a small ensuite bathroom and a lounge/ kitchen room. Access to the flat would be via a new external stairway to the rear of the property.
8. Bolton Council's Location of Restaurants, Cafés, Public Houses, Bars and Hot Food Takeaways in Urban Areas Supplementary Planning Document Adopted September 2013 (the SPD) sets out that cafés are not acceptable adjacent to residential properties and, within 50 metres, will be subject to restrictions on opening hours. These restrictions are justified on the basis that residents can reasonably expect to enjoy their properties free from the types of nuisance that such uses may create, especially at times outside of normal retail hours.
9. In this case, the appeal property is not in a district or local centre and there are residential properties within 50 metres. The proposed café is a town centre use that could result in nuisance to neighbouring residential occupiers. However, the appeal property was previously in retail use and it is part of a terrace of established commercial uses.
10. The hours of opening in the application form are given as 0700 to 1700 Monday to Friday and 1000 to 1600 on Saturdays. During the time that the application was being considered, the parties agreed amended opening hours from 1000 to 1800 Mondays to Sundays and bank holidays. Given the small size of the premises, and the proposed hours of operation, the proposal would not result in a significantly different frequency or intensity of use to that associated with a retail use.
11. Furthermore, while the outdoor seating area would result in a low number of customers congregating outside when the weather permitted, they would not obstruct the footway and the daytime opening hours would ensure that there was no disturbance to nearby residential occupiers during quieter times of the day such as early mornings and evenings.

12. The location is accessible by non-car modes of transport, including walking, cycling and public transport. While some customers would be likely to drive to the café, this would be during the day and any additional car journeys would not be significant in the context of the existing busy road. Provided deliveries and collections did not take place outside of the hours of operation, there would be no adverse impacts arising from vehicular movements.
13. A Class A3 café could give rise to cooking odours. However, the coffee and sandwich bar is located away from the windows and doors and no external flue or ventilation system is proposed. Given the small scale nature of the proposal and the small capacity of the premises, there would be limited potential for significant cooking odours to be created such as could result in detrimental impacts to neighbouring occupiers.
14. Future residential occupiers of the first floor flat would be aware of the café use including potentially through internal noise, customers to the front and activity at the rear of the premises including the waste storage area. In this respect, the low key nature of the proposal and the hours of operation would ensure that there would be no significant noise and disturbance during quieter times of the day such as early mornings and evenings.
15. The proposed first floor flat would be small, but it would meet the internal floor area requirements for a 1 person 1 bed flat. However, while the small rear yard area would allow for the storage of bins, it would not provide an area of private outdoor space for the occupiers. This would be contrary to the guidance in the Council's General Design Principles Supplementary Planning Document Adopted January 2016. I accept that first floor flats elsewhere might have no or limited outdoor space, but I cannot be certain that they were considered in the same policy context. Historic permissions that fail to provide modern standards of living accommodation do not provide a justification for the scheme.
16. Therefore, the flat would fall short of providing a reasonable standard of living accommodation for future occupiers. Nevertheless, the Council considers that it would be suitable to be occupied by a person connected with the business and, based on the evidence, I see no reason to disagree. This is a matter that can be addressed by condition.
17. Therefore, the proposal would not result in adverse impacts on the living conditions of neighbouring residential occupiers, subject to restrictions on the hours of operation and the occupancy of the first floor flat. Provided these measures are secured by planning condition, the proposed Class A3 café would not conflict with the development plan, including Policy CG4 of Bolton's Core Strategy Development Plan Document Adopted March 2011 (the LP) or the SPDs. These seek to ensure that development is compatible with surrounding uses and occupiers, that it does not generate unacceptable nuisance, odours or noise and that it provides adequate standards of accommodation.

### **Conditions**

18. In the event the appeal was allowed, the Council suggested planning conditions. I have assessed these against the tests set out in the National Planning Policy Framework.
19. A condition specifying the approved plans is necessary in the interests of certainty. A condition specifying hours of opening and restricting the timing of

deliveries and collections is necessary to protect the living conditions of the occupiers of neighbouring properties.

20. A restriction on the occupancy of the first floor flat above the premises to a person connected to the business is justified, given that it would not provide adequate living conditions for persons unconnected to the business.
21. The Council's Environmental Health Officer additionally recommended conditions relating to schemes for the control of fumes and noise. However, on the basis that the proposal would not give rise to significant noise or odours, and the flat would be occupied by a person connected with the business, I have not found it necessary or reasonable to attach conditions in this regard.

### **Conclusion**

22. For the reasons set out above, the appeal should therefore be allowed.

*Sarah Manchester*

INSPECTOR