



Appeal Decision

Site visit made on 5 January 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Appeal Ref: APP/N4205/W/20/3255816

46 to 48 St Helens Road, Bolton BL3 3NH

- 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 Asif Patel of Mother Hubbards against the decision of Bolton Metropolitan Borough Council.
- The application Ref 08197/20, dated 10 April 2020, was refused by notice dated 15 June 2020.
- The development proposed is for the change of use from Bank (Class A2)¹ to Restaurant (Class A3) including alterations to front, side and rear elevations and installation of flue to rear elevations.

Decision

1. The appeal is allowed, and planning permission is granted to partially change the use on the ground floor, from Bank (Class A2) to Restaurant (Class A3) including alterations to front, side and rear elevations and installation of flue to rear elevations at 46 to 48 St Helens Road, Bolton BL3 3NH in accordance with the terms of the application, Ref 08197/20, dated 10 April 2020, and the plans with it, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in complete accordance with the following approved plans: Site Location – 01/PL/D1 (Figure 1); Existing and Proposed Elevations – 02/PL/D2 (Figure 2), and Existing and Proposed Floor Layouts – 03/PL/D2 (Figure 3).
 - 3) Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes, noise and smell from the premises shall be submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full within 14 days of the use commencing and retained thereafter. The requirements of the scheme shall be in line with EMAQ "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems" 2018.
 - 4) The premises subject of this consent shall not be open for trade outside the following hours:- 09:00hrs to 23:30hrs on Sunday to Thursday, and 09:00hrs to 0:00hrs on Friday and Saturday.
 - 5) No deliveries shall be taken or dispatched from the premises outside the following hours:- 08:00hrs to 18:00hrs on Monday to Friday, 09:00hrs to 16:00hrs on Saturday, and 10:00hrs to 16:00hrs on Sundays and Bank Holidays.

¹ The Town and Country Planning (Use Classes) Order 1987 (UCO)

Procedural Matters

2. For clarity, I have taken the name of the appellant's business from the appeal form and other documents within his submission. Whilst the appeal property is part single/part two storey, the details before me indicate that it is the ground floor that is only subject of this appeal. Thus, whilst I have taken the description in the banner heading from the application form, I have amended the description in my decision and inserted 'partially change the use on the ground floor' for precision. I have dealt with the appeal on this basis.
3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force and have made significant amendments to the previous system of use classes. Under the new system, Class A has been revoked and a new Class E has been created which incorporates a number of the previous use classes, including shops (Class A1); financial and professional services (Class A2) and restaurants and cafes (Class A3).
4. As the application was submitted before the new regulations came into force, it must be determined in accordance with the previous UCO. I have therefore treated the appeal premises in A2 use and the proposed restaurant as being an A3 use. In determining this appeal proposal, I have also had regard to the implications of the changes that have since taken place, including their effect on relevant development plan policy. However, for the reasons that follow, it has not been necessary to seek comments from the main parties on this issue, as it would not alter the outcome of this appeal. I have not prejudiced any party in taking this approach.

Main Issues

5. The main issues of this appeal are the effect of the proposed development on:
 - i. the living conditions of local residents, with particular regard to noise, disturbance and odours; and,
 - ii. the vitality and viability of Daubhill Local Shopping Centre (DLSC).

Reasons

Background

6. The appeal property currently comprises a vacant building in the DLSC, which has a variety of commercial uses, and fronts St Helens Road, which is a busy road that is well utilised by motorists. Outside the site on St Helens Road are short stay parking bays, which are a common feature throughout this road. On Randal Street, which runs alongside the site, double yellow lines are present, with additional restrictions in the section closest to the junction with St Helens Road, preventing loading between 07:00hrs and 10:00hrs, then again between 16:00hrs and 19:00hrs. The double yellow lines continue from some distance along Randall Street from the junction with St Helens Road, terminating just beyond the community centre and mosque.
7. I am informed the last use of the site was as a bank. Furthermore, it is anticipated that the proposed development would create 8no. full time and 6no. part time jobs.

Living conditions

8. The wider area adjacent to the site is predominantly commercial in nature, especially along St Helens Road, in the form of terraced properties fronting the Street. It is common ground between the main parties that no residential properties are located within the terrace of properties comprising the site, which accords with my findings during my visit. Although I do accept the presence of some residential units in the terrace on the opposite side of Randall Street, to the site, including No 40A St Helens Road. Nonetheless, No 40A is already located above a takeaway. I also acknowledge the presence of No 1A Randall Street to the rear of the site, which is currently unoccupied.
9. There are already some evening uses operating in the surrounding area, including various food outlets and hot food takeaways in proximity to the site. I acknowledge that noise would result from customers arriving at and departing from the appeal premises, including talking and possibly congregating in groups on the footway outside, although this would be limited due to the width of the pavement and the patrons dining within the property. There is little detail of the number of customers that could be accommodated within the host building. Nonetheless, the internal floor of the entire premises, subject of this appeal, is reported to be 147m², which I do not consider to be excessive.
10. In addition, I accept that noise would arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time. Such noise would likely occur in the area to the rear of the site in proximity to No 1A. However, in the context of the comings and goings at other local premises and the DLSC in general, I do not find that this would necessarily be more intrusive in the case of the host property. In the case of No 1A, I find that the parking restrictions on Randall Street would provide some additional mitigation for its future occupiers, through the prevention of motorists parking outside the building. However, given the sustainable location of the site and the public transport available, along St Helens Road through a number of bus services², it is also likely that customers would not necessarily travel to the site by a private vehicle.
11. I note the concern raised by the Council's Environmental Health Officer to the opening hours originally proposed in the application. However, I do not have any updated comments from her surrounding the appellant's suggested reduced operating hours provided in his submission. Although, the Council has provided a set of suggested opening hours in its submission. In the absence of any evidence to the contrary, I find the Council's suggested conditions to be reasonable in this instance, especially as they align with those listed in the Council's Location of Restaurants, Cafés, Public Houses, Bars and Hot Food Takeaways in Urban Areas Supplementary Planning Document 2013 (the SPD). Thus, with particular regard to noise and general disturbance, I do not consider that neighbouring occupiers would receive any significant harmful effects from the operation of the appeal scheme and the comings and goings of its customers, which could be easily controlled by the imposition of a suitably worded condition.
12. The proposed flue is sited to the rear of the site and whilst this location is close to No 1A, it will be separated by an existing access. Additionally, the side elevation of No 1A that faces the site has no windows or openings located

² No's 551, 553, 559 and 582

within it. Consequently, all of the windows serving this residential development do not directly face the proposed location of the flue and are sited a reasonable distance away. Overall, I am satisfied that the windows on No 1A would not receive any significant harmful odours from the flue.

13. Furthermore, given the distance of the flue from No 1A and other residential properties, I do not consider that any neighbouring occupiers would experience any significant harmful effects regarding excessive noise. I accept that the scheme is lacking sufficient detail surrounding the extraction system. However, I am confident in this particular instance, given the site-specific circumstances, that a suitably worded condition could be imposed, to ensure that otherwise unacceptable development could be made acceptable.
14. For all of these reasons, I therefore conclude that the proposed development would not cause significant harm to the living conditions of local residents. This would accord with the amenity aims of Policy CG4 of the Council's Core Strategy 2011 (CS), the SPD and the requirements of the National Planning Policy Framework (the Framework).

Vitality and viability

15. The appeal submission is clear that the proposed development is for a restaurant and not a takeaway. On the evidence before me, I have details of the type of hot food that would be prepared and consumed on site³, where I am informed that no other similar establishment exists in approximately a 3-mile radius. Although there is some certainty of the kind of restaurant that would be in operation, including the type of food it would be selling, I recognise that a change to a restaurant selling other types of hot food could not be controlled if planning permission was granted for an A3 use.
16. The Council admits that there is not a specific policy relating to the balance of uses within the DLSC. However, the SPD is clear that a proliferation of the same use within a locality can result in a multiplication of impacts to the detriment of nearby businesses and the character of the area. Thus, the viability and vitality of the DLSC will require a variety of retail and non-retail uses, and would be harmed by a plethora of any one particular use.
17. The Council have provided a detailed list of a number of properties on both sides of St Helens Road, ranging from No 2 to No 86. This accords with my own findings during my visit, and outlines the nature of the commercial properties along St Helens Road in the vicinity of the site. Although little details have been provided, I note the reference to the convenience store at the opposite end of the terrace to the site, which has recently received permission to partially change its use to A3/A5.
18. I accept that an excessive number of restaurants and other non-retail uses, such as takeaways would be detrimental to the character and overall function of the DLSC through a cumulative impact. However, my general impression was that, despite the significant difficulties which face many local shopping centres, was that the DLSC seemed to be relatively healthy. Whilst noting the Council's reported numbers of similar non-retail uses to the proposed development within proximity of the site, I am not convinced that the scheme before me would result in a proliferation of the same/similar uses to the

³ Fish and chips

detriment of the vitality and viability of the DLSC. Accordingly, and for this reason, I do not consider that the proposed development would result in any associated harmful visual effects or to the overall character of the DLSC.

19. For all of these reasons, I therefore conclude that the proposed development would not cause significant harm to the vitality and viability of the DLSC. This would accord with the land use and retail aims of CS Policies CG3, CG4, the SPD and the requirements of the Framework.

Conditions

20. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the Planning Practice Guidance (PPG) and have amended the wording where necessary in the interests of clarity and simplicity.
21. I attach a condition specifying the approved plans, for certainty, and a condition to submit details of the proposed extraction system is both reasonable and necessary. It is also reasonable and necessary to attach conditions relating to the hours of operation and deliveries to ensure there is no significant harm created to the living conditions of the neighbouring occupiers.

Conclusion

22. Taking all matters into consideration, I conclude that the appeal should succeed.

W Johnson

INSPECTOR