



Appeal Decision

Site visit made on 23 March 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2021

Appeal Ref: APP/V4250/W/20/3264037

38 Leigh Road, Leigh WN7 1RX

- 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 & Mrs Marian & Corina Pachiu against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/20/89031/CU, dated 23 April 2020, was refused by notice dated 20 August 2020.
 - The development proposed is change of use of premises at 38 Leigh Road to A3 Cafes/Restaurant - For the sale of food and drink for consumption on the premises.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of premises to A3 Cafes/Restaurant - For the sale of food and drink for consumption on the premises, at 38 Leigh Road, Leigh WN7 1RX, in accordance with the terms of the application Ref A/20/89031/CU, dated 23 April 2020, and subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The appeal scheme seeks permission for the operation of a café/restaurant under the A3 use class. Since the application was made, significant amendments have been made to the Town and Country Planning (Use Classes) Order 1987 (as amended) following the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Planning uses formerly falling within Classes A1, A2, A3, B1, D1 and D2 are now part of Use Class E – Commercial, Business and Service. However, transitional arrangements mean that for applications submitted before 1 September 2020, and until the end of July 2021, the use classes in effect at the time of the application should be used for the determination of the application. That is the case here, and I have determined the appeal accordingly.
3. I have been provided with accounts of the recent planning history and use of the property, including an assertion from the Council that an unlawful change of use from a shop (Class A1) to a drinking establishment (Class A4) took place either in late 2019 or early 2020 and has not since reverted to an A1 use. As a result, the Council asserts that permitted development rights relating to a shop under Class A1 no longer apply. It is not my role in this appeal to determine the existing lawful use of the property, but so far as it is relevant to the main issues, I have had regard to the Council's indication that the use of the premises as a shop under Class A1 could be resumed without planning permission, and to the appellants' indication that the application was made on the basis of a change of use from a Class A1 use to a Class A3 use.

Application for costs

4. An application for costs was made by Mr & Mrs Marian & Corina Pachiu against Wigan Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are the effects of the proposal on i) the living conditions of neighbouring residents, with respect to noise and disturbance, and ii) highway safety, with respect to parking and servicing of the business.

Reasons

Background

6. The appeal site forms part of a parade of 10 ground floor commercial premises lining Leigh Road. At the time of my visit, the parade included three hair salons/barbers, a tanning studio, a physiotherapy clinic, a games shop, a takeaway, two seemingly vacant units and the appeal premises. Most were closed at the time due to Covid-19 restrictions.
7. The site is close to Leigh Town Centre, within an area of increasing residential character to the side streets as one travels away from the centre, but which still has commercial uses lining much of the main road. In policy terms, the premises fall outside of the designated Town Centre, with Policy S1E of the Wigan Replacement Unitary Development Plan Remaining Policies document (April 2006) (the UDP) applicable to the proposal. This permits the conversion of shop units of less than 150sqm outside of town centres subject to certain criteria. The Council accepts that the proposal meets the requirement for the premises to be suitably located for access on foot or cycle, being close to residential properties and on a bus route. Its acceptability therefore lies in it being suitable with respect to the living conditions of nearby residents and highway safety.
8. In considering the proposal, I have had regard as a material consideration to a recent appeal¹ at the same site which was dismissed in September 2019, which sought permission for a change of use to a drinking establishment (Class A4).

Living Conditions

9. The appellants indicate that the proposed café/restaurant would accommodate around 24 covers, although the submitted plans indicate seating for up to 32 patrons. The premises would operate until 2100 hours on Mondays to Thursdays and Sundays, until 2200 hours on Fridays, Saturdays and Bank Holidays, and until half past midnight on New Year's Eve.
10. The surrounding area includes numerous residential properties, including flats above the commercial parade and dwellings across the road and to the rear on Irvine Street. However, I also saw Leigh Road to be a busy main road lined with commercial uses, including several takeaways likely to operate into the evening hours, and there was a constant flow of traffic and pedestrians. As such, there is a level of activity and noise which is common to the area and to which residents would be accustomed.

¹ Appeal Ref APP/V4250/W/19/3232345

11. The proposed opening hours would not be out-of-step with the location of the premises on a main thoroughfare. These would not be unsociable hours in this context and the premises would not operate late into the evening when residents would rightly expect noise levels to be lower. I also note the hours fall within the acceptable hours for hot food establishments set out in the Council's supplementary planning guidance².
12. Moreover, these hours also represent a reduction from the previous appeal which sought to operate until 2330 hours each day. I agree with the previous Inspector that such hours of operation for a drinking establishment, with potential noise from music and patrons congregating outside during opening hours and after closing time, would lead to harmful disturbance to the living conditions of neighbouring occupants. However, a café/restaurant is a different operation to a drinking establishment, with customers visiting primarily to dine rather than drink. The overall number of patrons would also be small, and it is unlikely they would all depart together at closing time, as may occur with a drinking establishment. I also note an open rear yard to the premises would not be available for public use. Given the nature of the proposed use, and the earlier closing times, the risk of noise and disturbance from patrons congregating outside the premises late into the evening would be much reduced compared to the previous scheme.
13. The Council remains concerned that a café/restaurant use would not entirely eliminate the possibility of inebriated patrons causing noise and disturbance. It may not, but the likelihood of it occurring regularly would be significantly less than would be the case for a bar or pub where the focus is on consumption of alcohol. The appellants have also proposed a management plan with measures including use of CCTV, signage, sound insulation between the premises and the upper floor flat and an undertaking to engage with local residents. These measures could be secured by planning condition and would further minimise the risk of noise and disturbance to neighbouring occupants. Separately, the appellants would be required to adhere to the premises licence which I understand has been granted by the Council, and which typically has attendant conditions to regulate operation of the use and behaviour of customers.
14. Having regard to the evidence before me, therefore, I find that the proposed use would not generate the type or frequency of disruptive activity feared by the Council, and I conclude that the proposal would not lead to harmful noise or disturbance that would undermine the living conditions of neighbouring occupants. Consequently, there would be no conflict with Policy CP17 of the Wigan Local Plan Core Strategy (September 2013) (the CS) or Saved Policy S1E of the UDP which together require that new development is planned and designed so that it does not have an unacceptable adverse impact on amenity and quality of life of nearby residents and businesses.

Highway Safety

15. The appeal premises are located close to a pedestrian crossing with the zigzag lines passing directly in front and extending to meet double yellow lines on the corner with Irvine Street. As such, there is no provision for parking directly in front of the appeal site. On-street parking is available on Irvine Street, and there are loading bays on the opposite side of Leigh Road a short distance to the north and south. The Council's concern is that the proposal would generate

² Hot Food Establishments Supplementary Planning Guidance (September 2004)

- similar servicing requirements to the previously proposed A4 use, and that the premises could not be adequately serviced given the highway restrictions.
16. I note the previous Inspector's concerns that the availability of parking to surrounding streets is limited, and I saw this to be the case on Irvine Street. I also understand the Inspector's view that the size and nature of deliveries to a drinking establishment, including heavy barrels and crates, may tempt delivery drivers to park inconsiderately and cause obstruction to drivers and pedestrians. However, other commercial uses on Leigh Road are similarly constrained by the highway layout, but are still able to operate. The appeal premises could also operate without restriction as a shop, for which deliveries could be as frequent as a café/restaurant, if not more so.
17. The appellants have sought to address the previous Inspector's concerns with use of the rear alleyway, by instead proposing to use the loading bays on Leigh Road, and indicating that they would undertake deliveries themselves. The loading bays appear specifically designed to serve the various businesses and dwellings located along Leigh Road. They are close at some 30-35 metres from the appeal premises and the signalled pedestrian crossing would allow for safe movement of deliveries across the road.
18. I acknowledge that a café/restaurant could also require heavy barrels and crates as were identified by the previous Inspector, but such deliveries are likely to be more infrequent than for a drinking establishment. Even so, given the small scale of the proposed use, it would be possible for the appellants to control how deliveries are undertaken through a servicing plan, including directing drivers to the loading bays and advising them to use appropriate equipment to move goods. I accept that an individual delivery driver may still choose to park in a hazardous position, but such risk would exist regardless of the use of the premises, and could occur at any other premises in the parade. However, a servicing plan, if adhered to, would reduce the likelihood of indiscriminate parking and the attendant risk to pedestrians and drivers.
19. Having regard to the surrounding highway network, the scale and nature of the use, the expected size and frequency of deliveries and the appellants' proposed measures, I am satisfied that the proposal could operate without significant risk to highway safety. Consequently, I do not find conflict with Policy CP7 of the CS or Saved Policies S1E and A1S of the UDP, which together require developments to provide appropriate, well designed, convenient, safe and secure parking; and for them to be suitably located in terms of access on foot from the surrounding area and considerations of road safety.

Other Matters

20. I have had regard to objections raised by interested parties, including local councillors at the committee meeting where the application was determined. These objections make reference to incidents purported to have occurred at the appeal premises prior to the application being made. I have also considered the appellants' responses. Ultimately, this is not an enforcement appeal, and it is not my role to determine whether a breach of planning control has occurred. I have taken this evidence into account so far as it is relevant to the main issues, but whether or not the appellants' took actions deemed objectionable by interested parties, this is not in itself a determinative matter, and I have determined the appeal, without prejudice, on its own planning merits.

Conditions

21. I have had regard to the list of conditions suggested by the Council. Where necessary, I have adjusted the wording to ensure it meets with the relevant tests for conditions set out in the Framework. The appellants have agreed in writing to those conditions which would be pre-commencement.
22. In addition to the standard time limit for implementation, a condition setting out the approved plans is necessary to provide certainty.
23. In order to protect the living conditions of nearby occupants, it is necessary to impose conditions setting out the opening hours of the premises; restricting use of the rear yard by patrons; and requiring submission, approval and implementation of a Management Plan, sound insulation and extraction of fumes and odours.
24. Conditions requiring a Site Servicing Plan and specifying the hours when deliveries can take place are necessary in the interests of highway safety.

Conclusion

25. Taking all matters into account, I find that the application accords with the development plan, taken as a whole, and there are no material considerations that indicate permission should nevertheless be withheld. For the reasons given, therefore, I conclude that the appeal should be allowed.

K Savage

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 approved shall be carried out in accordance with the details indicated on plan references: Site Location Plan 'Gyco Solutions, 38 Leigh Road'; P2E170420 REV 23-07-20- 'Proposed'.
- 3) The premises shall not be open for trade or business except during the following hours: 1000 to 2100 hours on Mondays to Thursdays; 1200 to 2200 hours on Fridays and Saturdays; 1200 to 2100 hours on Sundays; 1200 to 2200 hours on Bank Holidays; and 1200 to 0030 hours the following day on New Year's Eve.
- 4) The use of the development hereby permitted shall not commence until a scheme for the extraction of fumes and odours has been implemented in accordance with details previously submitted to, and approved in writing by, the Local Planning Authority. All works which form part of the approved scheme shall be retained thereafter.
- 5) The use of the development hereby permitted shall not commence until a scheme of insulation of the ceiling separating the café/restaurant from the first floor flat has been implemented in accordance with details previously submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be retained thereafter.
- 6) The café/restaurant use hereby permitted shall be managed and operated at all times in accordance with a Management Plan, to be submitted to, and approved in writing by, the Local Planning Authority before the use of the café/restaurant commences. The Management Plan shall include details of all measures to be implemented at the site to ensure that the use does not adversely impact upon the living conditions of neighbouring residents and uses.
- 7) All deliveries/servicing of the use hereby permitted shall take place in full accordance with a Site Servicing Plan to be submitted to, and approved in writing by, the Local Planning Authority before the first use of the café/restaurant commences.
- 8) Deliveries to the site shall only take place during the following hours, namely: 0730 to 1800 hours on Mondays to Saturdays; and 1000 to 1800 hours on Sundays and Public Holidays.
- 9) The rear yard area of the site shall be accessible to staff only and shall not be accessible to customers at any time.

End of Schedule