The Planning Inspectorate

# Appeal Decision

Site Visit made on 20 April 2021

**by K A Taylor MSC URP MRTPI**

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

**Decision date: 06 May 2021**

**Appeal Ref: APP/N4205/W/20/3259832**
**Ground Floor, 23 Market Street, Westhoughton, Bolton, BL5 3AH**

- 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 Joe Fairhurst against the decision of Bolton Metropolitan Borough Council.
- The application Ref 08456/20, dated 1 June 2020, was refused by notice dated 2 September 2020.
- The development proposed was originally described as "Change of use from A1 to A4. External extraction".

## Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail (Class A1) to bar (Class A4) at Ground Floor, 23 Market Street, Westhoughton, BOLTON, BL5 3AH in accordance with the terms of the application, Ref 08456/20, dated 1 June 2020, and the plans submitted with it, subject to the following 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: PCE-Fairhurst-May-20-Planning Revision A1.

    3) The premises shall only be open for customers between the following hours:
    09:00 – 23:30 Sundays - Thursdays
    09:00 – 24:00 Fridays and Saturdays

    4) Deliveries shall be taken at the site only between 07:00 and 18:00 hours Mondays to Fridays, and between 09:00 and 18:00 hours on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.

    5) The collection of refuse from the site shall only take place between the hours of 07:00 and 18:00 Mondays to Fridays, and between 09:00 and 18:00 hours on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.

    6) No external sound-amplifying equipment, loudspeaker system or public address system shall be installed or operated, and no music shall be played in the external yard area at any time.

## Procedural Matters

2. Notwithstanding the original description of development set out in the banner heading above, which is taken from the application form. During the course of the application the proposal was revised, and the external extraction (flue) removed from the scheme. The Council's decision notice sets out the description of development as '*Change of Use from Retail (Class A1) to Bar (Class A4)'*, this is also the description set out in Part E of the appeal form. The Council dealt with the proposal on this basis and so shall I.

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order). In the interests of natural justice both parties had the opportunity to make representation. However, having regard to regulation 3 and 4 of the Regulations, I have considered this appeal on the basis of the use classes specified in the Schedule to the Use Classes Order on 31 August 2020.

## Main Issue

4. The main issue is the effect of the proposal on the living conditions of neighbouring residential occupiers, with regard to the proliferation of other similar uses, noise and disturbance.

## Reasons

5. Policy OA3 of Bolton's Core Strategy, Development Plan Document, 2011(CS), sets out that the Council will continue to promote Westhoughton town centre as being suitable for a mix of retailing, leisure, employment and housing areas. Policy CG4 ensures that new development is compatible with surrounding land uses and occupiers, protect amenity, privacy, safety, security and should not generate unacceptable nuisance.

6. Bolton Council's Location of Restaurants, Cafés, Public Houses, Bars and Hot Food Takeaways in Urban Areas, Supplementary Planning Document, Adopted September 2013 (SPD) sets out that bars will normally be approved within designated shopping areas provided that they do not result in detriment to the living conditions of residential occupiers or impact negatively on the vitality and viability of the centre. It goes on to say that in groups of shops these uses will not be acceptable where there is a residential property adjacent to the site concerned, which includes residential users that are immediately above the premises. Where residential accommodation is within 50m, opening hours will be restricted.

7. The appeal property is a two-storey mid-terrace building with a vacant ground floor commercial premises (A1). The site is within the town centre of Westhoughton with Market Street comprising of a mix of commercial uses and flats above premises. To the west of the site it adjoins the public house of 'The Victoria' and to the east is a takeaway. There is an additional doorway to the front elevation which serves as a separate access to a self-contained first floor flat.

8. The proposal is for the change of use of the ground floor to a bar (A4). There would be internal layout changes including a disabled Wc, additional toilet and a staff and storeroom to the rear. The shop front would remain and be rebranded. There would be no alterations to the access for the first floor flat.

9. The application form states the proposed hours of opening would be 12:00 hours to 01:30 hours Monday to Sunday, including bank holidays. However, the accompanying evidence *'Design & Access Statement, Revised 28th July 2020'* sets out that these hours are just for the licence and actual hours are more likely to be Monday to Thursday 12:00 hours to 23:00 hours, Friday and Saturday 12:00 hours to 01:30 hours and Sundays 12:00 hours to 00:00 hours.

10. The Council's Pollution Control Officer objected to the proposals on the basis that it has the potential for noise nuisance and other anti-social behaviour from a bar at that location. They have indicated records of historic complaints received from the adjoining public house, however I have limited evidence of these complaints, including whether it was from the operating hours, public nuisance, use of the outdoor space to the rear of the public house or what they specifically related to. Furthermore, the 'Abatement Notice' relates to noise from amplified music and is dated from 2013, some 8 years ago. Moreover, I have no substantive evidence of any recent anti-social behaviour at the adjoining premises or within the vicinity of the appeal site.

11. I acknowledge that the use of the ground floor as a bar would generate some additional level of noise than a retail premises, as this would be expected with any bar / drinking establishment. There is also the potential for some noise and disturbance arising from the comings and goings of customers. However, this needs to be assessed in the context of the premises' small size and its location.

12. The appeal property is located within a town centre and is adjoining an existing public house to one side and a hot food takeaway to the other, with a range of other commercial uses within the vicinity of the site. There would be a baseline with regard to noise sensitivity already being established in the locality, and, it would be potentially higher within a town centre location. I have no doubt that local residents would be aware of this.

13. The self-contained first floor flat has a separate access point and is within the same ownership, who I would expect to have some responsibility and consideration for any occupier. Those properties to the rear of the site are physically separated by an alleyway and a substantial concrete panel boundary wall. Neither do the plans before me indicate that any outside areas to the rear or the alleyway would be utilised by customers. Nonetheless, suitably worded conditions could limit associated noise and disturbance of the use to the rear of the premises.

14. The use of the bin storage in the rear yard and alleyway would be typical of any commercial or retail use occupying the building. There is also no evidence to suggest that the bar would have an ancillary takeaway other than that falling within the 'Use Class' of the proposal. I also do not accept the Council's contention that the previous use would have only operated mainly in daytime hours, as this was an off-licence and likely would have opened during the evenings until late. In terms of the opening hours, including deliveries I see no reason why these could not be controlled by a suitably worded condition. I acknowledge the appellant's intentions above for hours of opening, however the hours of use of the premises should reflect the requirements of the Council's guidance in the SPD being within 50m of residential accommodation.

15. As such, I do not consider that the proposal, particularly as the size of the premises is small, which would limit it's occupancy of customers, would

generate any additional levels of noise, disturbance or other activity to an unacceptable degree that would be over and above what would be reasonable within a town centre location. Nor that it would cause significant harm to the existing living conditions of those neighbouring residential occupiers.

16. The Council's evidence refers to the concentration of such uses, including restaurants/bars/takeaways and that the SPD, considers that where proliferation is considered to be a potential problem an assessment will be undertaken on the likely impacts on vitality and viability of the centre. The Council acknowledge that there would be no detrimental effects on the vitality and viability of Westhoughton Town Centre, but it would still result in an unacceptable concentration of restaurants, takeaways, and bars/pubs detrimental to residential amenity with increases in evening and late-night noise and disturbance.

17. However, there appears to be no specific CS policy relating to the restriction of numbers of such uses in the town centre. Policy OA3, supports a mix of uses. Furthermore, as I saw during the site visit there were only 3 public houses along Market Street, 'The Victoria', 'The White Lion' and 'Weatherspoons', there was also a 'Brewery Tap' but it wasn't evident that this was solely a drinking establishment.

18. Therefore, given the extent of the amount of commercial properties and the distance along Market Street, I do not consider there would be an over proliferation of bar/public house uses. It is not uncommon to see a group of such uses within town centre locations. The comparisons between other uses, such as restaurants, cafes, hot food takeaways, is somewhat incorrect as these vary in the type of provisions and is an unjustified approach. Nevertheless, I do not consider that by allowing the appeal it would result in any cumulative impact combined with similar uses that would substantially cause harm to the living conditions of existing neighbouring residents within the immediate area.

19. Moreover, in this case, the proposal would result in a number of benefits including that a vacant unit would be occupied, and it would remove the existing 'dead frontage' during the daytime. Jobs would be created including 4 full time and 4 part time positions being made available. These considerations and social and economic benefits would have a positive impact on the town centre, and to some degree the wider locality.

20. For these reasons, I conclude that the proposed change of use would not be harmful to the living conditions of neighbouring residential occupiers, in regard to the proliferation of other uses, noise and disturbance. It therefore complies with CS Policy CG4 as I have set out. It would also not be in conflict with the guidance set out in the Council's SPD.

**Other Matters**

21. Interested parties have raised concerns over existing noise, smells and anti-social activity. They attribute this existing problem to users of licenced premises along Market Street. While I recognise their concerns about these matters, I have no substantive evidence which has been put forward to suggest that allowing the appeal would significantly increase the potential for such anti-social, or noise activity in the future. The Council also has the necessary powers to deal with such noise activities and smells relating to existing licensed premises.

## Conditions

22. A list of conditions has been sent to both parties, of which in part have been incorporated from those within the Council's appeal evidence. I have no evidence to suggest that the appellant disagrees with them. I acknowledge the Council's comments on the conditions. I have considered these in light of the Planning Practice Guidance (PPG).

23. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. In the interests of protecting the living conditions of neighbouring residents of the area, I have imposed a condition relating to opening hours, as suggested hours by the Council and set out in the SPD.

24. I have also imposed conditions which limit the delivery hours and collection of rubbish at the site. These are necessary to protect the living conditions of those residents who are directly to the rear of the site and first floor flat above, particularly as these activities could be undertaken at the rear of the site and refuse is likely to consist of glass, bottles and other items associated with the use of the premises. For the same reason, I have also included a condition preventing the use of sound amplifying equipment and music, outside in the external yard area, as this is shown as being accessible on the approved plan.

## Conclusion

25. For the reasons given I conclude that the appeal should succeed.

*K A Taylor*

INSPECTOR