



Appeal Decision

Site Visit made on 22 June 2021

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2021

Appeal Ref: APP/M0655/W/21/3271414

14A The Cross, Lymm WA13 0HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by London & Cambridge Properties Limited against the decision of Warrington Borough Council.
 - The application Ref 2020/37158, dated 15 June 2020, was refused by notice dated 10 December 2020.
 - The application sought planning permission for the variation of condition 5 (Opening hours) to 11:00 - 00:00 hours on Mondays to Thursdays and 11:00 - 00:30 Fridays and Saturdays and 11:00 - 23:00 Sundays, Bank Holidays or Public Holidays on previously approved application 2019/35968 (restaurant/hot food takeaway) without complying with a condition attached to planning permission Ref 2019/35968, dated 26 March 2020.
 - The condition in dispute is No5 which states that: The use hereby permitted shall not be open to customers except between the hours of 1700 and 0000 Midnight on Mondays to Fridays and 1700 and 0030 on Saturdays and not at anytime on Sundays, Bank or Public Holidays.
 - The reason given for the condition is: In the interests of amenity and to comply with Policy QE6 of the Warrington Core Strategy, Warrington SPD: Environmental Protection and Warrington SPD: Design and Construction.
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Decision

1. The appeal is allowed and planning permission Ref 2020/37158, dated 15 June 2020, for the Variation of Condition 5 on planning permission Ref 2019/35968, dated 26 March 2020 at 14A The Cross, Lymm, WA13 0HP, is granted subject to the conditions set out in a Schedule attached to this decision.

Preliminary Matters

2. During the Council's consideration of the planning application the scheme was amended by the appellant to alter the proposed closing time on Sundays, Bank Holidays and Public Holidays from 0000 midnight to 2300. The Council did not reconsult on the amendment, however, as the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take the reduced proposals into account and I have proceeded on that basis.
3. The appeal property lies within the Lymm Conservation Area (CA) and within the setting of Lymm Cross, a Grade I Listed Building, and Lymm Stocks, a Grade II Listed Building. There is no dispute between the main parties that the proposed development would not have an adverse effect on the character or

appearance of the CA or the listed buildings including their setting. Having considered the proposal and visited the site, I concur with that view. Accordingly, it is my view that the development proposed would preserve the character and appearance of the CA and the setting of the listed buildings and I shall make no further reference to this matter.

Background and Main Issue

4. Since the Council made its decision, a further application (ref. 2020/38325) was submitted to the Council seeking the earlier opening times of 1100 on Mondays to Saturdays inclusive. That variation to Condition 5 was approved by the Council on 3 February 2020. Accordingly, the substance of this appeal is in relation to the proposal for a later opening time on Fridays and additional opening on Sundays, Bank and Public Holidays between 1100-2300.
5. Paragraph 55 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. With this in mind, the main issue is whether Condition 5 is reasonable and necessary to safeguard the living conditions of the occupiers of the nearby residential properties. This is with particular regard to the noise and disturbance associated with the current restaurant and takeaway use of the building and users of the site entering and leaving it.

Reasons

6. The site is a single storey unit located in the town centre of Lymm. It is currently in use as a restaurant/take away serving a variety of hot foods. The site is accessed from a ramped platform facing Lymm Cross, which is located on a cobbled open area with benches to its peripheries. The operation of the site is subject to requirements under the previous permissions to maintain an air extraction and filtration system to control fumes and odour arising from cooking activities on the site.
7. The locality predominantly consists of a mix of commercial premises typical of a town centre location. These include restaurants, bars, public houses and takeaways which, under normal circumstances, are active during evening times. In addition, there are residential properties about the centre, including flats above some commercial premises.
8. The proposal seeks the extension of the Friday opening hours by 30 minutes to 0030 and opening between the hours of 1100-2300 on Sundays, Bank holidays and Public Holidays. No further changes to the building are proposed.
9. Policy QE6 of the Warrington Borough Council Local Plan Core Strategy [2014] (CS) states that the Council, in consultation with other Agencies, will only support development which would not lead to an adverse impact on the environment or amenity of future occupiers or those currently occupying adjoining or nearby properties. Amongst other things, this includes the effects of noise and disturbance.
10. According to the Council, the nearest residential properties are at 2A Pepper Street, a flat above a café/bar which faces on to the public square, and Thirlmere Lodge, a block of flats above a bar and restaurant situated on an approach road alongside the unit. Both lie within 15m of the site.

11. The proposed Friday opening times would be consistent with the hours of opening currently permitted at the site on Saturdays. The later opening times on these consecutive days would be typical of the weekly opening time profiles of other businesses in the locality. According to the evidence, this includes the premises below the nearby residences which are sometimes open until 0200 on those days.
12. Residents residing in town centre locations will certainly anticipate exposure to greater amounts of activity and noise, including at times later into the evening, compared to those typical of predominantly residential areas. The proposal would introduce an extended period of comings and goings on Fridays into the early hours. However, any increased effect would be when nighttime activity in the town centre would be at its greatest. It would therefore be experienced in the context of generally higher levels of activity and background noise.
13. I acknowledge that the nature of the premises is such that it would potentially draw late evening clients, including those leaving drinking establishments in the vicinity (and others), some of whom may linger to eat takeaways close by. However, being mindful that the business has been operating for some time until 0030 on Saturdays, there is little evidence of formal complaints having been made associated directly with noise emanating from the site or its customers. It follows that there is little to indicate that the perceived or actual anti-social behaviour issues raised by nearby residents can be attributed to the appeal premises.
14. In regard to trading at the site on Sundays, Bank and Public Holidays, the evidence suggests that other premises in the centre are open for trading 7 days a week and up to the evening times proposed. There is little before me to indicate why the opening of the site on those specified days should be prevented given its acceptability at other times.
15. Whilst activity in the locality on Sundays and some formal holidays might be at lower levels than other days, it is equally likely to be so for the appeal premises. In the substantial absence of direct demonstrable harm, including that arising from any cumulative effects, any necessity for 'respite' would be without justification. Accordingly, I find the existing restrictions would not meet the tests of reasonableness. Furthermore, I note that this would be consistent with the views of the Council's Environmental Health adviser who has raised no objections to the proposed opening times.
16. For the above reasons, based on the evidence before me, I find that the proposed extended hours of opening would not unacceptably harm the living conditions of nearby residents, with particular regard to the use of the site and level of associated noise and disturbance. I therefore find no conflict with Policy QE6 of the CS, which seeks to protect residential amenity including that arising from noise and disturbance.

Other Matters

17. I note the additional concerns of a nearby resident in relation to litter problems in the locality. As public litter bins are present close by and elsewhere, I am not persuaded that this is a determinative matter in the context of this case.

Conditions

18. I have imposed the conditions as set out in the Council's statement. In doing so I have had regard to the necessity for the other restrictions imposed on the original permission against the tests in Paragraph 55 of the Framework and Planning Practice Guidance. I have made some minor changes to wording to better meet those tests. The conditions are necessary in order to safeguard the living conditions of nearby residents and the character and appearance of the locality.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed.

R Hitchcock

INSPECTOR

Schedule of Conditions to planning permission Ref 2020/37158

1. The development shall be carried out in accordance with the following:
 - (a) Application Form
 - (b) Design and Access Statement DSD/lja/094/20
 - (c) TQRQM19290111627200 / 124/19 – Location Plan
 - (b) Submitted drawing: 'Elevations, ground and location plan (U 186 100A)'.
2. The cooking equipment and associated air extraction and filtration system shall be implemented in strict accordance with the details submitted to and approved in writing the by the Local Planning Authority under application 2020/37184. The installed equipment shall thereafter be operated and maintained in accordance with the manufacturer's instructions and shall be used at all times when any cooking activities are occurring.
3. The flue shall be installed in strict accordance with the details submitted to and approved in writing under application 2020/37184 and shall retained as such thereafter.
4. The use hereby permitted shall not be open to customers except between the hours of 1100 and 0000 midnight on Monday to Thursday (inclusive); 1100 and 0030 on Fridays and Saturdays; 1100 and 2300 on Sundays, Bank or Public Holidays.
5. The approved café/restaurant shall comprise of no more than six covers within the premises at any one time.

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