



Appeal Decision

Site Visit made on 22 June 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 12th July 2021

Appeal Ref: APP/Z2315/W/21/3271566

The Stackhouses, Bank Parade, Burnley BB11 1UG

- 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 Ray Harrison against the decision of Burnley Borough Council.
- The application Ref COU/2020/0208, dated 21 May 2020, was refused by notice dated 25 January 2021.
- The development proposed is the change of use from workshop into café/bar.

Decision

1. The appeal is allowed and planning permission is granted for the change of use from workshop into café/bar at The Stackhouses, Bank Parade, Burnley BB11 1UG in accordance with the terms of the application, Ref COU/2020/0208, dated 21 May 2020, subject to the conditions in the attached Schedule.

Procedural Matters

2. The development applied for has been carried out.

Main Issue

3. The main issue is the effect of the development on the living conditions of the residents of nearby properties, with particular regard to noise and disturbance.

Reasons

4. The appeal relates to a two storey former industrial building that is located on the edge but within the boundary of Burnley Town Centre as defined in Burnley's Local Plan (2018) (the Local Plan). The character of the surrounding area is predominantly commercial, however there are residential flats within the appeal building, in the adjoining building to the rear, and in the immediate vicinity.
5. I recognise that customers entering and leaving the property and congregating outside to smoke and converse could cause disturbance to residential occupiers nearby. However, the effect of these activities has to be assessed within the context of a town centre environment and its prevailing noise and activity levels.
6. On my site visit I saw that there are two restaurants nearby, which the Council confirms are open into the late evening. There is also a Royal Mail sorting office, a tyre centre, physiotherapist, snooker club, nursery and various light industry and office uses located in the area. Whilst the appeal building was closed at the time of my mid-morning site visit, I saw that the area was relatively busy, with pedestrian activity, vehicle movements, and an associated level of noise typical of an edge of town centre location.

7. Policy NE5 of the Local Plan seeks, amongst other things, to resist development that generates noise which is likely to create significant adverse impacts on health and quality of life when it cannot be mitigated and controlled through the use of conditions (my emphasis) or through pre-existing effective legislative regimes. The Planning Practice Guidance (PPG) also sets out that planning can address the adverse effects of noise sources through, amongst other things, the use of planning conditions to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of the day, such as evenings and late at night.
8. Such disturbance caused by the comings and goings and the outside congregation of customers could therefore be limited by the imposition of the Council's suggested planning condition, restricting the hours of operation to no later than 21:00 hours. In my view, this is not particularly late in the context of a town centre environment and its range of uses, and would allow nearby residents a reasonable degree of peace and quiet in the evenings, when they would expect to relax and sleep.
9. I am also mindful that the Council's Environmental Health Section has not raised any objections in regard to noise, having assessed the appellant's noise impact assessment, which has been carried out in accordance with British Standard methodology. Whilst no details of soundproofing have been provided, it considers that measures can be implemented on site to limit the exposure of residents of the building to noise arising from the proposal. I have no substantive reason to disagree with this view and agree that the Council's suggested measures, including a limit to the noise levels of amplified music, the closing of roof light openings and a restriction on delivery and collection times, could effectively be secured by planning conditions.
10. I am aware that local residents have provided their own noise recordings. However, little detail about existing background noise levels, weather conditions, the equipment that was used to take the readings, or where this equipment was positioned on the site has been provided. As such I am unable to be certain that these provide a fully representative picture of the existing noise levels at the site. In any case, I am satisfied that the Council's suggested conditions would provide sufficient mitigation to ensure that an acceptable noise environment is provided in the future.
11. I therefore find that, subject to the imposition of such conditions, the development would not harm the living conditions of the residents of nearby properties, with particular regard to noise and disturbance. As a result, it would not conflict with Policies SP5 and NE5 of the Local Plan. Amongst other things, these seek to protect amenity of neighbouring occupants and mitigate significant adverse noise impacts through the use of planning conditions. It would also accord with paragraph 127 of the National Planning Policy Framework which seeks a high standard of amenity for all existing and future users.

Other Matters

12. The appeal property is a Grade II listed building that is located in the Top O' T h' Town Conservation Area. The Council has not raised any objections to the effect of the development on the character and appearance of the conservation area and the character and appearance and setting of the listed

- building. In reaching my decision I have also had special regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area and preserving the listing building and its setting. In these respects, and in the absence of any evidence to the contrary, I am satisfied that it preserves those interests.
13. Local residents have raised a number of other concerns. These include the use of the footway in front of the appeal building for tables and chairs, and the subsequent obstruction of the highway for pedestrians. However, the use of the highway for outside seating is not a part of the appeal proposal that is before me and I am mindful that there is other legislation with which to deal with obstructions on a highway.
 14. The submitted plans show a partition wall to restrict access to the adjacent residential flats and there is little firm evidence before me to demonstrate that the development has had or will lead to undesirable consequences through an increase in anti-social behaviour or crime in the area.
 15. It has been put to me that an alcohol license was issued prior to the submission of the planning application, that trees have been felled to create a rear parking area, that the existing bar use has fluctuated between the appeal building and 61 Bank Parade and that scaffolding has been erected to the rear of this neighbouring property. I also note the concerns about the structural integrity of this scaffolding. However, these have not had any bearing on my decision as I have only had regard to the planning merits of the proposal that is before me. It would also be for the Council to determine the expedience of enforcement action in respect of any breach of planning conditions in the future.
 16. I have also been made aware of the residential alcohol recovery facilities that are located nearby and I note the concerns that have been raised about the health and wellbeing of its service users. However, it is a well founded principle that the planning system does not exist to protect the private interests of one person against the activities of another. Property value is also a private matter.
 17. In addition, the lack of an objection from residents of the flats within the appeal building, irrespective of their relationship with the appellant, is not a determining factor in the consideration of an appeal. The question is whether there would be unacceptable harm in respect of noise and disturbance, that cannot be controlled through the use of planning conditions, even if objections have or have not been lodged.

Conditions

18. I have considered the conditions suggested by the Council against advice in the PPG: *Use of planning conditions*. In addition to a condition specifying the relevant plans (which is necessary to provide certainty), conditions are necessary to restrict the opening hours, music noise levels, the opening of rooflights and the delivery and collection times in the interests of safeguarding the living conditions of neighbouring occupiers. A condition to ensure the storage and disposal of waste is carried out in accordance with the approved refuse and recycling strategy is also reasonable and necessary in the interests of avoiding disturbance and pollution. However, I have reworded suggested condition 3, in respect of music noise levels, to ensure that it is precise and enforceable.

Conclusion

19. For the reasons given above, having taken account of the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be allowed.

Mark Caine

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
HARRI/09A Dwg 00A (Site Location Plan at 1:1250 Scale dated 15.05.20), HARRI/09A Dwg 03A (Proposed Site Plan at 1:200 Scale dated 15.05.20) and Drawing No. HARRI/09A Dwg 02B (Proposed Floor Plans and Elevations at 1:100 Scale dated 15.05.20).
- 2) The A4 use hereby permitted shall only be open to customers between the hours of 09:00 and 21:00 on any day.
- 3) No amplified music or other music that exceeds 75dB shall be played at the premises at any time.
- 4) The storage and disposal of waste shall be carried out in accordance with the approved refuse and recycling strategy (Ref: HARRI-09A/01) and retained for so long as the use continues. No refuse or recycling material shall be stored or placed for collection on the adopted highway (including the footway), except on the day of collection.
- 5) No deliveries shall be taken or despatched from the site (including waste and recycling) outside the hours of 09:30 – 15:00 on any day.
- 6) The rooflights serving the A4 use hereby permitted shall remain closed between the hours of 09:00 and 21:00 on any day.