



Appeal Decision

Site visit made on 22 June 2021

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2021

Appeal Ref: APP/Z2315/W/21/3272281

46 Church Street, Padiham, BB12 8JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr N Windsor against the decision of Burnley Borough Council.
 - The application Ref VAR/2020/0073, dated 12 February 2020, was refused by notice dated 9 October 2020.
 - The application sought planning permission for a proposed change of use to mixed use of A1 shop and hot food takeaway (A5) without complying with a condition attached to planning permission Ref APP/2017/0142, dated 30 June 2017.
 - The condition in dispute is No 5 which states that:
(5) No delivery service shall operate from the premises.
 - The reason given for the condition is:
(5) In the interests of highway safety and residential amenity and in accordance with policy CF13 of the Burnley Local Plan Second Review.
-

Decision

1. The appeal is allowed and planning permission is granted for a proposed change of use to mixed use of A1 shop and hot food takeaway (A5) at 46 Church Street, Padiham, BB12 8JQ in accordance with the application Ref VAR/2020/0073 dated 12 February 2020 without complying with condition No 5 set out in planning permission Ref APP/2017/0142 granted on 30 June 2017 by Burnley Borough Council, but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan received 20 June 17.
 - 2) Within 3 months of the date of this decision, a scheme of odour suppression shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a plan of the proposed ventilation system detailing odour abatement measures, the location and details of the filters and fans and the manufacturer's recommendations concerning frequency and type of maintenance, and a noise assessment to assess the noise that would be generated by the operation of all the equipment associated with the fume extraction and ventilation system. The approved details shall be implemented within 3 months of the Local Planning Authority's written approval and shall thereafter be retained.
 - 3) The main use of the premises shall remain as a daytime delicatessen / sale of hot food operating on any day. Any late evening opening of the

premises after 6.00pm shall remain ancillary to the main daytime use as a delicatessen / sale of hot food and not operate independently.

- 4) The delivery service shall only operate between 6.00pm and 10.30pm on any day.
- 5) The application premises shall not operate between 10.30pm and 8.00am on any day.

Main Issues

2. The main issues are the effect of varying the disputed condition, firstly, on highway safety and, secondly, on the living conditions of neighbouring occupiers with regard to noise and disturbance.

Reasons

Highway safety

3. The appeal site is located at the junction between Church Street, which is a busy main road, and Alma Street, which is a narrow residential street. There are double yellow lines along the northern side of Church Street, including directly in front of the appeal property.
4. The proposed variation to the condition would allow the business to offer a delivery service during the evening. Whilst there are no parking spaces on this side of the road, on-street parking bays are located directly opposite, and several of the surrounding streets have unrestricted parking. In this regard, there are opportunities to park in the immediate vicinity of the premises without resorting to illegal parking. Moreover, the proposed variation would restrict the delivery service to after 6.00pm only, which would be after the evening rush hour. This would also be at a time when many other nearby businesses would be closed. The delivery service would also be likely to be used by some customers who would otherwise choose to travel to the premises by car to collect orders.
5. A collision took place in the vicinity of the appeal site in 2018 in a situation where a driver was looking for a parking space. However, the full circumstances surrounding that collision are unclear, and there is no indication that it was linked to the operation of any nearby hot food takeaway. In any case, the additional demand for parking associated with the provision of a delivery service would be modest in my view.
6. For the above reasons, I conclude that the proposed variation to the disputed condition would not prejudice highway safety. It would therefore accord with Policy IC1 of Burnley's Local Plan (2018), which requires that development provides safe access and maintains the safe and efficient flow of traffic on the surrounding highway network.

Living conditions

7. The appeal property is largely surrounded by residential properties, and there are a number of existing dwellings in close proximity to its entrance. In this regard, the provision of a delivery service could result in some additional comings and goings to the premises. However, this is unlikely to be significant in the context of existing trips generated by customers arriving to collect orders. The hours of operation could also be restricted to 10.30pm by

condition, which would limit any such disturbance. I further note that Church Street is a busy main road with other restaurants and takeaways along it. Whilst concerns have been raised regarding inconsiderate behaviour by existing delivery drivers, including the playing of loud music, that behaviour is not intrinsic to the proposed delivery service. Accordingly, the appeal does not turn on this matter.

8. For the above reasons, I conclude that varying the disputed condition would not significantly harm the living conditions of neighbouring occupiers with regard to noise and disturbance. It would therefore accord with Policy SP5 of Burnley's Local Plan (2018), which seeks to ensure there is no unacceptable adverse impact on the amenity of neighbouring occupants.

Undisputed Conditions

9. Planning Practice Guidance states¹ that decision notices for the grant of planning permission under section 73 should restate those conditions imposed on earlier permissions that continue to have effect. I have therefore followed that approach. However, the time limit condition is no longer necessary as the development has now been implemented.
10. With regard to Condition 4 attached to permission Ref APP/2017/0142, this is pre-commencement in nature, and the Council state that there is no record of it having been discharged. I have therefore reworded the condition to require the submission of these details within 3 months of the date of this decision. In the event that this condition has in fact been discharged, this matter can be addressed between the parties.

Conclusion

11. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition, but substituting for it another, and restating those undisputed conditions that are still subsisting and capable of taking effect.

Thomas Hatfield

INSPECTOR

¹ Paragraph Ref 21a-040-20190723