



Appeal Decision

Site Visit made on 28 September 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 26 November 2021

Appeal Ref: APP/E2340/W/21/3276903

Powerhouse Gym, Burnley Road, Brierfield, Nelson BB9 5HX

- 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 I Ahmed against the decision of Pendle Borough Council.
 - The application Ref 20/0641/FUL, dated 21 September 2020, was refused by notice dated 22 March 2021.
 - The development proposed is a gym to ground floor and change of use of first floor and second floor to 10 apartments.
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Decision

1. The appeal is allowed and planning permission is granted for a gym to ground floor and change of use of first floor and second floor to 10 apartments at Powerhouse Gym, Burnley Road, Brierfield, Nelson, BB9 5HX in accordance with the terms of the application, Ref 20/0641/FUL, dated 21 September 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr I Ahmed against Pendle Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. The main parties have been provided with an opportunity to comment on the revised Framework and its relevance to the determination of this appeal. References to the Framework in this decision therefore reflect the revised Framework.
4. It is clear from the plans, which were amended during the course of the planning application, and accompanying details that the development proposed is for a gym at ground floor level and for the change of use of the first and second floors to 10 apartments. I have therefore used the Council's description of the development proposed in the bullet header above, and in my decision. However, I have omitted the word 'retain' as this is superfluous and not an act of development.

Main Issue

5. The main issue is the effect of the proposed development on highway safety.

Reasons

6. The appeal relates to a large three storey building that is situated on a corner location next to the junctions of Burnley Road and Oxford Street and Carlton Street respectively. It is also situated within Brierfield Town Centre, where the character of the surrounding area is predominantly commercial. Nonetheless, there is also terraced housing with little off-street car parking provision in the immediate area.
7. The proposed apartments would be provided with eight off street car parking spaces via two separate existing small car parks at ground floor and lower ground floor levels. A single car parking space is also proposed for gym users within the ground floor car park, and ten covered and secure cycle parking spaces are to be provided within the lower ground floor of the appeal building for the apartments. The Council considers this to be inadequate and that vehicles owned by future residents and gym users associated with the proposed development would have an adverse impact upon highway safety.
8. Nonetheless, the Council has also put forward that there is no policy justification for applying its maximum car parking standards, acknowledging that such an approach is not consistent with the Framework, and suggests that the individual characteristics of the proposed development therefore need to be assessed. I have no reason to question this view and consequently find Saved Policy 31 of the Replacement Pendle Local Plan 2001-2016 (2006) (Local Plan) and Policy ENV4 of the Pendle Local Plan Part 1, Core Strategy 2011-2030 (2015) (Core Strategy) to not be wholly consistent with the Framework in terms of promoting sustainable travel and accessibility, as they specifically refer to compliance with the Council's existing maximum car parking standards.
9. Little substantive evidence regarding current traffic generation, accidents, or on-street car parking levels has been provided by either main party. At the time of my mid-morning site visit it was apparent that whilst there was some on-street parking there was sufficient space available on Oxford Street, Carlton Street and in the surrounding highways to accommodate additional cars. I also visited the nearby Wood Street car park, which is unrestricted, and had eight spaces out of nineteen unoccupied.
10. I appreciate that this is only a snapshot in time, and that this situation may change at busier peak times during the evening, weekends and when prayers at the nearby Mosque take place, when there is likely to be a greater demand for parking. However, in the absence of any firm evidence put forward by both parties, it gives an indication of the level of on-street car parking and available off street parking during this time of the day.
11. Given its town centre location the appeal site is also situated within walking distance of local facilities and services and is well served by public transport. Whilst the parties disagree about the likely car ownership levels of future occupiers, and I have had regard to the 2011 Census data put forward by the Council, the proposed flats would have only one bedroom each. Any increase in on-street parking as a result of the proposal would therefore be likely to be minimal given the site's sustainable location, the proposed off-street parking provision and the available spaces within Wood Street car park.
12. The Council has also raised concerns about the angled alignment of one of the vehicular entrances, the narrowness of both vehicular access points and the

limited manoeuvring space within the proposed car parks. However, the two vehicular access points and car parking areas are well established and there is available space to manoeuvre onsite so as to be able to leave safely in a forward gear.

13. Furthermore, the fifth car parking space on the ground floor car park would not prevent entry into the building, as the Council suggests, nor is there any evidence to demonstrate that vehicles parked on the lower ground floor car park area would adversely affect the deliveries to and from the neighbouring workshop, as these appear to be serviced via a roller shutter door on Ross Street. Moreover, I am mindful that the Council's Highway Authority raised no formal objections to the proposed car parking layouts or level of off street car parking provision in its consultation response to the amended planning application.
14. I can appreciate local residents' concerns that should any users of the proposal choose to park in the surrounding streets where there is already parking, this could compound competition for on-street parking and could cause inconvenience and frustration. However, I have been presented with very little evidence as to how users of the appeal site choosing to park on surrounding streets would lead to actual harm to highway safety.
15. As a result of all of these factors, I am satisfied that there is sufficient space within the proposed car parking areas to allow for the safe access, manoeuvring and passing of vehicles, and that any modest increase in on-street parking as a result of the proposal would not appreciably compromise highway safety.
16. Although there would be some conflict with Core Strategy Policy ENV4 and Saved Policy 31 of the Local Plan in respect of maximum car parking standards I attribute limited weight to this due to their inconsistency with the paragraph 108 of the Framework. Furthermore, paragraph 111 of the Framework indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe. For the reasons given above the proposal does not conflict with this advice.

Other Matters

17. Local residents have raised a number of other matters in respect of the loss of employment, the blocking of views, pressure on public services and local facilities, the future use of the proposal and the appeal notification process.
18. However, the Council has not raised any objections to the principle of the proposed apartments in this town centre location or in respect of the effect of the proposed scheme on the character of the existing building or the surrounding area, and I see no reason to take a different view.
19. Planning Officers reached the view that as the gym was to be retained at ground floor level it would be an appropriate mixed use scheme, including housing, that would not undermine the economic role of the centre. I have no substantive reason to question this. As a result, there is little evidence before me to demonstrate that the proposal and any loss of employment space would not comply with Core Strategy Policy WRK4.

20. The proposal is for the change of use of an existing building and does not involve any additional new storeys. As such existing occupiers of neighbouring dwellings would not experience any material change in respect of outlook or view. Nor is there any firm evidence to suggest that the proposal would place an undue strain on local infrastructure, including public services and areas of open space.
21. Furthermore, concerns about the future use of the ground floor gym and local resident's frustration regarding the appeal notification process 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.

Planning Balance and Conclusion

22. Where policies which are the most important for determining the application are out-of-date, as in this instance, Paragraph 11d of the Framework states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. The appeal proposal would clearly provide some economic and social benefits. The provision of additional housing would be a benefit to the area and would accord with the Framework's aim to significantly boost the supply of homes. I have also found that it would not have a materially harmful effect on highway safety, which would be a neutral factor in the planning balance. Overall, the adverse impacts of granting permission, including any conflict with the development plan, would therefore not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. For the reasons given above, I therefore conclude that the appeal should be allowed.

Conditions

25. I have considered the conditions suggested by the Council against advice in the Planning Practice Guidance (PPG): *Use of planning conditions*. In addition to a condition specifying the relevant plans (which is necessary to provide certainty), a condition relating to materials used on the replacement windows and rooflights is necessary in the interests of character and appearance.
26. It is also necessary in the interests of highway safety to ensure that the parking areas are laid out, and kept available for future resident's parking, as would be achieved via condition 4. However, for precision I have included a reference to the parking space for gym users. In addition, I agree with the Council's Highway Section that a condition is necessary to ensure that the proposed secure cycle storage is implemented and retained to encourage more sustainable modes of transport.
27. Whilst not suggested by the Council in their appeal submission, its Environmental Health Section has suggested conditions for details of noise mitigation measures and the control of environmental vibration be submitted to the local planning authority for their approval. I consider these to be necessary to safeguard the living conditions of the future occupiers of the proposed development. However, I have re-worded and combined these requirements into one condition. For similar reasons, a condition to restrict the opening hours

of the gym is also needed. Finally, to ensure adequate drainage, a condition relating to the provision of foul and surface water drainage has also been imposed.

Mark Caine

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 permitted shall be carried out in accordance with the following approved plans: Drawing No.20 -E-01 01 Revision A, Drawing No.20 -P-02 Revision C and Location Plan 1:1250.
- 3) The development hereby permitted shall not be occupied until details / samples of the materials to be used in the construction of the external surfaces of the replacement windows and rooflights hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples before the development hereby permitted is occupied.
- 4) The development hereby permitted shall not be occupied until the car parking spaces have been marked out and clearly signed to be used for the benefit of the occupiers of the apartments and the users of the gym in accordance with Drawing No.20-P-02 Revision C. The car parking spaces shall thereafter be kept available at all times for those purposes.
- 5) The development hereby permitted shall not be occupied until the cycle storage facilities have been provided in accordance with Drawing No.20 - P-02 Revision C and shall be permanently retained for its intended purposes thereafter.
- 6) The ground floor gymnasium shall only be open to customers between the hours of 09:00 and 21:00 on any day.
- 7) The development hereby permitted shall not be occupied until a scheme of sound insulation to protect future residents from noise and vibration associated with the ground floor gymnasium has been submitted to and approved in writing by the local planning authority. The approved sound insulation works shall be completed before the development hereby permitted is occupied and shall be retained thereafter.
- 8) The development hereby permitted shall not be occupied until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The foul and surface water drainage shall be fully installed and completed in accordance with the approved details before the development hereby permitted is occupied and retained thereafter.