



Appeal Decision

Site visit made on 20 September 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2022

Appeal Ref: APP/Z4310/W/22/3300069
124 Breck Road, Anfield, Liverpool L4 2RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr R Kandiah against Liverpool City Council.
 - The application Ref 21F/2516, is dated 6 September 2021.
 - The development proposed is the change of use of the ground floor from public house (sui generis) to retail convenience use (Use Class E), along with alterations to the premises' frontage.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from public house (sui generis) to retail convenience use (Use Class E), along with alterations to the premises' frontage at 124 Breck Road, Anfield, Liverpool L4 2RD in accordance with the terms of the application, Ref 21F/2516, dated 6 September 2021, subject to the conditions in the attached Schedule of Conditions.

Application for costs

2. An application for costs was made by Mr R Kandiah against Liverpool City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description of development used in both the banner heading and my formal decision above has been taken from the planning application form, although I have made very minor alterations for clarity and accuracy.
4. This appeal stems from the Council's failure to determine the planning application within the prescribed period. No officer report (either in draft or final form) was made available to me, nor did the Council submit an appeal statement within the normal timescales. It was apparent from the appellant's statement and the Council's response to the claim for costs that planning permission would have been refused had the application been determined; although the reasons for this were not clearly set out in the evidence initially put before me.
5. I therefore requested that the Council submit a short statement setting out its position on the proposed development, and suggesting any conditions which it considered should be imposed in the event of my allowing the appeal. I also

gave the appellant an opportunity to respond to the points raised in the Council's further submission. In reaching my decision I have taken into account the additional comments submitted by both main parties, and am satisfied that no party's interests have been prejudiced by my taking this approach.

Main Issue

6. The main issues are:

- The effect of the proposed development on the provision of community facilities in the area;
- Whether the proposed development would provide suitable private and secure access to the residential accommodation on the upper floor of the building; and
- Whether the submitted drawings provide sufficient detail to enable the proposed development to be assessed.

Reasons

7. The appeal site is a public house on a corner site at the junction of Breck Road and Oakfield Road, within (and close to the eastern edge of) the Breck Road District Centre. The appellant's evidence indicates that the pub ceased trading in April 2021. There is residential accommodation, in the form of a three-bedroom flat, on the first floor of the building.
8. The proposed development is the change of use of the ground floor of the property from a public house (*sui generis* in the Use Classes Order¹) to a retail convenience store within Use Class E. There would also be internal and external alterations to the building, most notably the enlargement of an existing window opening to create a larger doorway into what would become the shop floor area.

Community facilities

9. The Council considers that the appeal property should be seen as a valuable community asset on account of "its long history, its prominent location and its place in the community as a social and cultural meeting place". Policy SP5 of the 2022 Liverpool Local Plan ("the LLP") seeks to protect existing community facilities. The policy does not specify the types of facility it is aimed at, but its supporting text explains that they "provide for the health and wellbeing, social, educational, spiritual, recreational and cultural needs of the community" and include "care facilities, day nurseries, hospitals, health centres and doctor's surgeries, libraries, community centres, places of worship, galleries, museums and theatres". SP5 states that the loss of such facilities will only be permitted where it can be justified by a lack of demand or need and where the premises are no longer suited to community use, or where there is replacement provision in an appropriate location.
10. The appellant suggests that Policy SP5 is not consistent with the provisions of Paragraph 93 of the National Planning Policy Framework ("the Framework"). It also seeks to support the provision of social, recreational and cultural facilities and services, and lists examples "such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship". It

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

was argued by the appellant that the Framework “clearly identifies local shops as a community asset of equal distinction” to public houses. However, neither the LLP or the Framework defines a closed list of facilities to be protected or supported. To my mind this indicates that the question of whether any individual facility should be considered a “community facility”, and its “value” for the purposes of applying Policy SP5 or Paragraph 93, are to a considerable extent matters of fact and degree in each case. I find no inconsistency between Policy SP5 and the provisions of the Framework, and accordingly I give it full weight in my decision.

11. In respect of existing community facilities, the supporting text to Policy SP5 sets out the aim of protecting those which are “valued by the local community”. The pub is not a listed Asset of Community Value, although of course this is not the only criterion by which its worth to the community can be measured. However, it is perhaps noteworthy that neither the Council’s consultation on the original planning application nor the notification of this appeal did not prompt a single objection to the loss of the public house from local residents (either as individuals or groups). While I acknowledge that public opinion (whether for or against a development proposal) on its own is unlikely to be a determinative factor when weighed against planning matters, in this case, I consider that the lack of any relevant representations suggests that the Paisley Gates is not seen as an especially valuable facility by the local community.
12. The appeal building is not Listed for its architectural or other historic interest or significance. While it has a reasonably prominent location at a junction of two main roads it is not an especially grand or imposing example of a public house; other than having attractive pilasters with ornate capitals alongside the ground floor window openings there appears to be little of interest in its architectural design and detailing.
13. The site is close to Liverpool Football Club’s home at Anfield, and although the pub was previously (and, I understand, for most of its existence) called “The George”, the current name “The Paisley Gates” pays tribute to Liverpool Football Club’s most successful manager. However, there is no evidence before me to suggest that any significant individual has had a personal connection to the building, nor is there anything to indicate that the building is directly linked to any historic or culturally significant events in the area.
14. I saw that there are several other pubs close to the appeal site, including The Old Barn, the King Charles, and the Lutine Bell, with many more slightly further afield. There are therefore numerous other similar facilities nearby, and the loss of the Paisley Gates as a public house would not leave the local community without a choice of venues to meet and socialise.
15. I note the Council’s comments about the effect of the Covid-19 pandemic and subsequent economic conditions on trade for many public houses nationally, and its concern that once the Paisley Gates ceased trading the appellant conducted an apparently very limited marketing exercise, no details of which were provided with the planning application. However, considering together the matters covered in the preceding four paragraphs, on the basis of all the evidence before me I find that the proposed development would not result in the loss of a “valuable community facility” in the terms set out in Policy SP5 of the LLP or Paragraph 93 of the Framework. The change of use from a public

house to a retail convenience store does not therefore need to be justified against the criteria set out in part 2 of Policy SP5 in this case.

16. I conclude that the proposed development would not be harmful to the provision of community facilities in the area, and there would be no conflict with Policy SP5 of the LLP or with Paragraph 93 of the Framework, the principal aims of which I have described above. The ready availability of alternative social venues in the area means that there would be no conflict with the provisions of Paragraph 92 of the Framework, which seeks to promote social interaction.
17. The Council indicated that the proposed development would also conflict with Policy SP3 of the LLP and the provisions of Paragraph 43 of the Framework. However, these deal respectively with the design of new development within district (and other) centres, and with the provision of adequate information to support decision-making; neither is directly relevant to this main issue, and I find no conflict with either on this matter.

Access to residential accommodation

18. The existing flat on the first floor of the appeal building would continue in residential use. It is not entirely clear from the information before me whether or not the flat has most recently been used as self-contained residential accommodation, or as living quarters for the pub manager. In any case though, Policy SP3 of the LLP seeks to ensure that in new and altered shopfronts a separate entrance to upper floor accommodation is provided where practicable.
19. The first floor flat would be entered from the street by the same small vestibule as at present. The submitted plans show that this would also be accessible by an internal door leading directly from the shop floor area; it would not therefore provide separate and secure access for the living accommodation. The appellant did not disagree with the Council's comment that "it would be practical and sensible to provide this as part of any work to convert the premise to a new use", and nor do I. I also agree with the appellant's suggestion that the relatively minor changes to the scheme which would be needed to provide separate access could be secured by a suitable condition.
20. Subject to the use of such a condition, the proposed development would provide suitable private and secure access to the residential accommodation on the upper floor of the building. It would therefore comply with the requirements of Policy SP3 of the LLP in this respect. It would also comply with the provisions of Paragraph 97 of the Framework, which seek to ensure that planning decisions promote public safety.
21. The Council also suggested that the lack of separate access also resulted in the proposal conflicting with Policy SP5 of the LLP and the provisions of Paragraph 93 of the Framework. However, as I have described above these primarily deal with the provision and retention of community facilities; there would be no conflict with either on this matter.

Submitted drawings

22. The Council considered that "the submitted plans are of insufficient quality and detail to allow proper assessment of the proposed alterations". However, I have found the submitted drawings to be adequate for assessing the main issues in this appeal, albeit that they are limited in respect of some particular details.

23. For the reasons I have set out in paragraphs 12 and 13 above I consider that the appeal site has very limited architectural or historic value; nevertheless this does not remove the requirement to comply with local and national planning policies which seek to ensure that proposed work (particularly to the building's street frontage) is well-designed and attractive, and to provide sufficient detail to enable this to be properly assessed. However, given the nature of the site and the proposed development, I consider that it is entirely appropriate in this case to impose conditions requiring the submission and approval of the necessary further details.
24. Subject to the use of such conditions, I consider that the submitted drawings provide sufficient detail to enable the proposed development to be assessed. I therefore find no conflict with Policies SP3, UD4 and UD7 of the LLP nor with the provisions of Paragraphs 43 and 126 of the Framework, to the extent that these require an appropriate degree of information to be provided to ensure that development is well-designed and functions well.

Other Matters

25. The appellant drew my attention to a grant of planning permission by the Council for a ground floor change of use at The Britannia, from a public house to a retail convenience store (Use Class E) and massage parlour (*sui generis*)². I do not know the full details of that case but have been provided with the Council's officer report. I acknowledge that consistency in decision making is important but note that the Council did not consider it necessary to weigh the replacement of a pub with a shop against the requirements of Policy SP5 of the LLP, as they have done in this case. Beyond that consideration, however, as *The Britannia* site is within a primarily residential area (rather than a district centre as in this appeal) it seems to me that the Council was entitled to identify a different range of "most relevant" issues and to assess the proposal against a different range of policies. The Council's decision in that other case has therefore carried very limited weight in my determination of this appeal.
26. I note the comments on the proposal submitted by two local ward councillors (writing to the Council in that capacity). They did not object to the proposed loss of the Paisley Gates as a public house, and indeed were supportive of the premises remaining in a "high street" use. They did however express concern about highway safety and car parking related to use of the premises as a supermarket, the possibility of the premises leading to an increase in crime or anti-social behaviour, and the obstruction of the footway during construction works.
27. In respect of highways matters, I note the response from the Council's Highway Development Control team that "although no off-street car parking is available, this is in keeping with the businesses along Breck Road", that the development would be likely to "encourage linked trips to other amenities along Breck Road and/or diverted trips from other retail units" nearby, and that overall the scheme would have "a minimal traffic impact". The same consultation response also pointed out that any scaffolding or hoardings which would obstruct the highway would require a licence from the Council; my understanding of such matters is that this would need to take account of pedestrian and highway safety as a matter of course. In respect of crime, the councillors' comments referred to there being a high rate of "alcohol issues"

² LPA Ref: 22F/0259

and “drug issues” in the local area. However, no substantive evidence was put forward to demonstrate how or why a change of use from a pub to a convenience store within a district centre which is already reasonably well provided with both uses would be likely to have a significant negative effect on crime in the area.

28. The Council’s appeal submissions did not suggest that any of these other matters raised would justify refusing permission for the scheme, and none of the evidence before me leads me to a different conclusion.

Conditions

29. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance (“the PPG”). I have also had regard to the appellant’s comments both in response to the Council and in respect of other matters where it was suggested that conditions may be appropriate.
30. In addition to the standard time limit condition (1), in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).
31. In order to protect the character and appearance of the area, and to ensure that the approved development is well-designed and attractive and provides an active and interesting frontage within the district centre, conditions in respect of details of door and window reveals (3), external finishes and lighting (4), and requiring frontage windows to be clear-glazed (5) are necessary.
32. Conditions limiting opening hours (6), requiring the installation of a fume extraction system in the event of the premises being operated as a restaurant (7), and limiting noise levels from plant (8) are necessary to protect living conditions for neighbouring residents, including occupiers of the upstairs living accommodation.
33. In respect of condition 7, the appellant suggested that it might be more appropriate to impose an alternative condition which would limit the use of the premises to Class E(a) (“the display or retail sale of goods, other than hot food”). However, having regard to the advice in the PPG³, and the reasons for which Class E was introduced (as set out in the *Explanatory Memorandum*⁴ to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020⁵), none of the evidence before me indicates that such a restriction would be either reasonable or necessary in this case for what is, after all, an existing commercial premises within a district centre. I have therefore used, with minor amendments, the wording in respect of a fume extraction system which the Council suggested, and which I consider to be both necessary and reasonable given the proximity of nearby residential properties. I also note the appellant’s similar comments in respect of condition 8. However, as it is conceivable that a retail unit may require the installation of noise-generating plant such as (for example) refrigeration equipment, I consider that a condition limiting plant noise is both necessary and reasonable.

³ Paragraph: 017 Reference ID: 21a-017-20190723

⁴ Available at <https://www.legislation.gov.uk/uksi/2020/757/memorandum/contents>

⁵ Statutory Instrument 2020/757

34. A condition in respect of waste storage (9) is necessary in the interests of protecting both the character and appearance of the streetscene, and living conditions of nearby residents. As I have explained under the second main issue above, a condition requiring the provision of separate and secure access to the first floor living accommodation, and the submission and approval of the details of such before the commencement of the approved development (10), is necessary in the interests of the security of residents and to comply with Policy SP3 of the LLP. A condition ensuring that inclusive (including level) access to and within the ground floor retail unit is provided, and the submission and approval of the details of such before the commencement of the approved development (11), is necessary to provide inclusive access and to comply with Policies SP3 and UD4 of the LLP.

Conclusion

35. The proposed development would not be significantly detrimental to the provision of community facilities in the local area, and safe and secure access to the residential accommodation on the first floor could be provided. The proposal complies with the development plan read as a whole.
36. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed

M Cryan

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:
 - Drg. No. 2 – Existing floor plans and proposed ground floor plans – Rev B (Feb 2022)
 - Drg. No. 3 – Existing and proposed elevations – Rev B (Feb 2022)
 - Drg. No. 4 – Proposed floor plan only – Rev B (Feb 2022)
 - Drg. No. 5 – Existing and proposed site plans with commercial and domestic bin storage details – Rev A (Feb 2022)
 - Drg. No. 6 – Existing and proposed front elevation with street scene view – Rev A (Feb 2022)
- 3) Notwithstanding the indicative detail shown on the approved drawings, no new windows or doors shall be installed until a schedule, including drawings at 1:20 scale with cross sections at 1:2 (or similar), has been submitted for written approval by the local planning authority. This schedule shall include all sill, lintel, and jamb/reveal details and final colour finish.

The works shall be carried out and retained in accordance with the approved details.
- 4) Details of the following external works shall be submitted to and approved in writing by the local planning authority before they are implemented:
 - (i) Colour finish to all external surfaces including the shopfront and doors
 - (ii) External Lighting

The development shall be carried out in accordance with the approved details before the development is occupied/brought into use.
- 5) The windows at ground floor level, fronting onto Breck Road and Oakfield Road, shall be retained in clear glazing and views into the premises shall not be screened or obscured in any way unless otherwise agreed in writing by the local planning authority.
- 6) The premises shall only be open for customers between the following hours:

08.00—23.00 Mondays to Sundays
- 7) In the event that the premises is used as a restaurant, a fume extraction system shall be installed to all areas where hot food is to be prepared in accordance. Extract ducts shall be acoustically insulated and acoustically isolated from associated fans and the building structure. The discharge point should be at least 1 metre above roof eaves or in another such position so as to minimise the likelihood of nuisance to neighbouring premises. The fume extraction system shall not be operated outside of the opening hours of the premises, unless otherwise agreed in writing by the local planning authority.

The fume extraction system shall be installed in accordance with the approved details (including as set out in this condition) before any use of the premises as a restaurant commences, and it shall be retained and operated as such thereafter.

- 8) The rating level of the noise emitted from any plant shall not exceed the existing background noise level. The noise level shall be determined at the nearest noise sensitive premises. The measurements and assessments shall be made according to BS4142 2014. Method for Rating Industrial and Commercial Sound
- 9) Any waste generated to be discarded as refuse or recycled shall be kept within the bin storage area hereby approved and shall only be placed outside the premises on the appropriate refuse collection day.
- 10) Provision shall be made within the development for separate and secure access to the residential accommodation on the upper floors of the building. Floor plans and elevations detailing this shall be submitted to and approved in writing by the local planning authority prior to any start on site, and the development carried out in accordance with the approved details.
- 11) Provision shall be made within the development for inclusive access into and within the ground floor unit and, for the avoidance of doubt, this shall include level access through the main entrance door. Floor plans, elevations and sections detailing this shall be submitted to and approved in writing by the local planning authority prior to any start on site, and the development carried out in accordance with the approved details.