



Appeal Decision

Site visit made on 6 June 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal Ref: APP/T2350/W/22/3312822

22 Woone Lane, Clitheroe, Lancashire, BB7 1BG

- 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 Mrs Emma Backhouse [Grounded by Dining@Will Ltd] against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2022/0833, dated 31 August 2022, was refused by notice dated 25 October 2022.
 - The application sought planning permission for change of use of premises to Café (A3) following temporary permitted development change of use from A1 to A3 without complying with a condition attached to planning permission Ref 3/2015/0673 dated 3 March 2016.
 - The condition in dispute is No 3 which states that: *the use of the premises in accordance with this permission shall be restricted to the hours between 0800 to 1800 on weekdays and 0800 to 1800 on Saturdays and there shall be no operation on Sundays or bank holidays.*
 - The reason given for the condition is: *to comply with Policy DMG1 of the Ribble Valley Core Strategy Adopted Version. The use of the premises outside these hours could prove injurious to the character of the area and in order to safeguard residential amenities.*
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. A café approved under planning application 3/2015/0673 has been operating from the appeal site. Condition 3 of that permission restricts the opening hours of the premises to between 0800 to 1800 hours Monday to Saturday with no operation on Sundays or bank holidays. The Appellant seeks to extend the opening hours to between 0800 to 2200 hours Tuesday to Saturday only.
3. The main issue is the effect that varying the opening hours of the café would have on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

4. The appeal site comprises the ground floor of a 2-storey terraced property located on the periphery of Clitheroe town centre. There are residential properties to either side of the appeal site as well as a flat above. Whilst there are commercial premises including a hotel and restaurant, bowling alley and

brewery within Holmes Mill directly opposite, they largely face away from the appeal site towards a pedestrianised area to the south-east. Woone Lane whilst not as quiet as a purely residential street, due to a degree of vehicular and pedestrian activity, nonetheless, has a more restrained character that is distinctly different to the lively commercial activity around the Holmes Mill frontage and the main town centre streets.

5. The submitted ground floor plan indicates that the footplate of the café is limited in size and thus, the number of customers per evening would be relatively low. However, the proposed extended opening hours would be at a time when neighbouring occupiers would likely be at home and would have a reasonable expectation of peace and quiet.
6. Notwithstanding any separate premises licence that may be held, the Appellant has confirmed that alcohol sales would be restricted to diners only and no live music would occur within the premises. Nevertheless, the later evening hours would be likely to cause an increase in noise and disturbance from activities including but not limited to, customers arriving and leaving the premises, increased use of the extraction system during cooking, as well as the sound of conversation and enjoyment which may vary in loudness.
7. Due to the close physical relationship between the appeal site and the neighbouring residential properties, such noise is likely to be acutely audible to the occupants of the flat directly above, and to a slighter but no less important extent, the residential properties to either side. This may be more apparent when windows and doors are open during warmer months. Such increased noise and disturbance 5 nights per week would adversely harm the living conditions of the immediate neighbouring occupiers. The properties of 12–18 Woone Lane, whilst within the same terrace as the appeal site, are unlikely to be significantly affected by the opening of the bistro into the evening, given that they are further away and have a degree of private defensible space to the front.
8. Paragraph 185 of the National Planning Policy Framework (the Framework) states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so, they should mitigate and reduce to a minimum, potential adverse impacts from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.
9. There is no noise assessment before me to evidence that the likely noise levels arising from the associated activities of the proposed bistro use, both internally and externally, would be acceptable. Nor is there a management plan to demonstrate how activities would be robustly controlled. As a result, I cannot be satisfied that the living conditions of neighbouring occupants would not be unduly harmed by the proposal to extend the opening hours into the evening.
10. I have considered whether this matter can be appropriately dealt with by condition, as suggested by the Council were I to allow the appeal. However, the outcome of any such assessment is unknown, as is the extent of any mitigation that it may recommend, assuming mitigation would be possible within the confines of the appeal site. I cannot therefore be certain that such a

condition would be reasonable or enforceable and as such, it would not meet the tests set out in paragraph 54 of the Framework, and the Planning Practice Guide.¹

11. For the above reasons, the proposed opening hours would adversely affect the living conditions of neighbouring occupiers, as a result of increased noise and disturbance. The disputed condition therefore remains reasonable and necessary. The proposal would conflict with Policy DMG1 of the Ribble Valley Core Strategy 2008–2028 which amongst other things, seeks to ensure new development considers the relationship between buildings and does not adversely affect the amenities of the surrounding area. It would also conflict with paragraphs 130 and 185 of the Framework, which seek to promote health and well-being, with a high standard of amenity for existing users.

Other Matters

12. I do not doubt that the bistro use would add to the range and quality of eating establishments within Clitheroe, as well as providing a source of local employment. I also note the signed proformas of support from interested parties. However, support does not equate to a lack of harm, and these considerations would not outweigh the harm that I have identified to the living conditions of neighbouring occupiers.
13. The Appellant has referred to the convenience store on the corner of Woone Lane and Eshton Terrace as well as Tom's Table restaurant, both of which operate into the evening and are close to residential properties. The details of these developments, specifically their status with regard to planning permission and whether they are subject to any controls regarding opening hours, activities or noise mitigation are not before me. In any event, the presence of these premises does not justify the harm to the living conditions I have found from the specific proposal before me.
14. The appeal site lies within, but on the edge of the Clitheroe Conservation Area, which relates to the historic core of the town including its medieval streets, castle grounds and later 19th century development. Its 2 and 3 storey buildings of predominantly local natural honey coloured stone, contribute positively to its aesthetic and historical significance. The proposal does not suggest any physical changes to the external appearance of the appeal site, and the Council does not object to the proposal on the grounds of any harm to the character or appearance of the CA. I concur with this view and consequently, the character and appearance of the CA would be preserved.

Conclusion

15. For the reasons given above, the development with the condition varied as proposed, would not accord with the development plan. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR

¹ Paragraph: 003 Reference ID: 21a-003-20190723.