



Appeal Decision

Site visit made on 14 November 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2024

Appeal Ref: APP/N4205/W/23/3320238

486 Blackburn Road, Bolton BL1 8PE

- 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 Mr S Munshi against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 12615/21, dated 11 November 2021, was refused by notice dated 21 November 2022.
 - The application sought planning permission for change of use from vehicle hire and shop (A1) to restaurant (A3) without complying with a condition attached to planning permission Ref 08815/20, dated 13 July 2020, which was approved on 20 August 2021.
 - The condition in dispute is No 4 which states that: *"No more than 90 customers shall be within the restaurant at any time"*.
 - The reason given for the condition is: *"To protect the character and amenity of the area"*.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from vehicle hire and shop (A1) to restaurant (A3) at 486 Blackburn Road, Bolton BL1 8PE in accordance with the application Ref 12615/21 dated 11 November 2021 without compliance with condition number 4 previously imposed on planning permission Ref 08815/20 dated 20 August 2021 and subject to the conditions set in the schedule to this decision.

Background and Main Issues

2. Planning permission for change of use from vehicle hire and shop (A1) to restaurant (A3) was granted in September 2007¹. A subsequent application amending the opening hours of the premises was approved in August 2021². Both decisions included a condition restricting the maximum number of customers permitted at the premises to 90 at any one time. The reason for the condition is set out in the banner heading above. The originally approved change of use has been implemented and, in my judgement, both of the previous planning permissions are extant.
3. The current consent applies to the whole of the building, but customer numbers are restricted. The appellant contends that, with the use of the first floor as seating area, the maximum customer numbers which could be achieved would be 225. The current proposal, therefore, seeks to replace condition 4 with a new condition restricting the number of customers to 225.

¹ Council reference 77960/07

² Council reference 08815/20

4. Given the above background, the main issue is the effect that varying the customer numbers would have on the character and amenity of the area, with specific regard to highway safety and parking provision, and the effect on the living conditions of the occupants of properties along Birley Street and Newnham Street, specifically from noise and disturbance.

Reasons

5. The restaurant is located on the corner of Blackburn Road and Newnham Street within the Astley Bridge Local Shopping Centre and within a commercial street frontage along Blackburn Road. Newnham Street is also commercial up to Holland Street and St Pauls Church. To the rear of the appeal site is St Pauls School and a nursery.
6. Beyond the church and school, the area is residential with a number of terraces, such as Brindley Street, which have their front elevations facing a footway and rear access provided off a narrow street. The wider area also includes a residential care home and elderly people's accommodation. At the time of my visit, I saw that off-street parking in the area is limited. Few of the residential properties have driveways, though some have created parking to the fronts of the dwellings.
7. The appeal site itself includes a small parking area to the rear which, by other conditions on the extant consents, is required to provide at least three spaces for employees or customers of the restaurant. The large supermarket opposite and other large retail units nearby have two-hour, customer only, restrictions on the car parks. The school has a small car park and other businesses in the area also have limited off-street parking.
8. There are sections of double and single yellow lines near junctions and time limited parking along Holland Street, in front of the church. However, beyond these restrictions the surrounding roads allow for on-street parking.
9. Policy CG4 of Bolton's Core Strategy Development Plan Document, 2011 (CS) seeks to ensure that development is compatible with the surrounding land uses and occupiers and protects amenity, amongst other matters. CG4 also seeks to ensure that development does not generate unacceptable nuisance, including noise. Policy P5 of the CS promotes accessibility by different types of transport and parking in accordance with the standards set out in Appendix 3.
10. For restaurants Appendix 3 does not set a minimum parking requirement for general parking and as such the restaurant use is not required, by policy, to provide off-street parking. Appendix 3 does require a minimum of three of the on-site parking spaces to be allocated as disabled parking. However, the three spaces within the appeal site have not been restricted to be disabled parking in the previous consents. It would, therefore, be unreasonable to impose such a restriction on the current appeal.
11. The Transport Statement (TS) submitted with the planning application advises that there is sufficient capacity within the existing on-street parking availability to accommodate the proposed increase in customers at the times required.
12. Although the parking study was undertaken in August 2020 and third-party representations have challenged the conclusions of the TS, I have no technical evidence from any party that disputes the findings of the TS. The survey was undertaken at a time when most Covid 19 restrictions had been lifted and

hospitality businesses were permitted to reopen, contrary to third party comments. I have no evidence that the TS has not taken account of the parking for other businesses, the school, and the church, including evening events, within the survey and assessment.

13. The Council Highway Officer raised no objections to the proposal. I have not been provided with any alternative parking survey data to substantiate the concerns of the third party, or the Council in their final decision and the recommendation for a Travel Plan/ Parking Strategy was not a request for additional information. Moreover, there is no evidence that the other businesses that have opened in the area since the TS was carried out have significantly reduced parking availability given the extent of the capacity shown within the TS.
14. The site is within a local centre where food and drink uses are promoted and encouraged. The site is accessible by public transport, cycling and walking and customers would have choice of alternative means of travel other than the private car. Moreover, customer arrivals and departures would be likely to be spread across the opening hours and the potential increase in parking pressure would, therefore, be limited.
15. The appellant suggests that when bookings are made the venue will advise customers of suitable places to park and that this would include not parking outside residential premises. The proposed additional condition, as recommended by the Council in the committee report, to require the submission of a Travel Plan/ Management Strategy would require the submission of the details of how the appellant intends to promote suitable places to park and promote alternative modes of transport other than the private car.
16. The additional condition would relate to the existing customer numbers as well as the proposed increase. Although the appellant does not accept the additional condition, given their own suggestion noted above, in my judgement the additional condition is reasonable and appropriate for the proposed variation of condition subject of this appeal and does not amount to reconsideration of the extant consent. Moreover, the condition is enforceable as the Travel Plan/ Management Strategy could be adapted to meet the agreement of the Council.
17. There are other commercial uses immediately adjacent to the restaurant and therefore any increase in customer noise within the premises would not be likely to be perceived by occupants of nearby houses. The noise and disturbance from customers leaving the premises would also be spread across the opening hours and the surrounding on-street parking and would not be significantly harmful to any particular properties along Birley Street or Newnham Street.
18. For these reasons I am not persuaded that the increase in customer numbers would cause any significant detrimental harm to the living conditions of properties in the area or that the displacement of parking to a wider area and the associated increase in foot traffic would increase noise to an unacceptable extent. The use of the premises primarily as a function room/ wedding venue, as raised by third parties, would require a separate planning application for change of use and occasional parties and events at the restaurant would be possible within the current consent.

19. For the above reasons I find that the proposed increase in maximum customer numbers would not cause a significant adverse effect on the character and amenity of the area, with specific regard to highway safety and parking provision, and the living conditions of the occupants of properties along Birley Street and Newnham Street in terms of noise and disturbance. The proposal would, therefore, not conflict with Policy CG4 or Policy P5 of the CS which, taken together, seek to ensure that development is compatible with surrounding land uses, protects amenity, does not generate unacceptable nuisance, including noise, and provides sufficient parking in accordance with the parking standards.

Conditions

20. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original permission unless they have already been discharged. The conditions on the original planning permission have been considered in light of the advice contained in the Planning Practice Guidance (PPG).
21. I have therefore granted a new permission, removed the disputed condition, and replaced it with one that limits the maximum customer numbers to 225, and re-worded some of the conditions to reflect the advice within the PPG.
22. The Council have recommended two additional conditions be imposed, should this appeal be allowed. The PPG makes it clear that the Local Planning Authority (and, therefore, the Inspector) shall consider only the question of the conditions subject to which planning permission should be granted. It is not a complete re-consideration of the original application.
23. However, the PPG also advises that new conditions may be imposed provided that they do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on that original permission.
24. The additional condition regarding noise protection measures, in the event of the playing of amplified noise, is not directly related to the increase in customer numbers at the restaurant and is, therefore, not reasonable to impose on this decision.
25. The additional condition requiring the submission of a Travel Plan/ Management Strategy is intended to further mitigate the harm arising from the proposal and, for the reasons given above, is reasonable and related to the appeal before me. However, I have not included the addition of the parking accumulation study requested by the Council in their Statement of Case as I have accepted the study submitted within the TS.

Conclusion

26. For the reasons set out above, I conclude that the appeal should be allowed subject to conditions.

K Townsend

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The premises shall not be open to customers except between the following hours:
1530 hours to 2330 hours Monday to Thursday inclusive;
1530 hours to 0200 hours Friday only;
1000 hours to 0200 hours Saturday only; and
1200 hours to 2330 Hours Sundays.
- 2) The extraction and filtration system approved under application 77960/07 shall be retained for the lifetime of the development.
- 3) No less than 3 of the 6 car parking spaces which are marked out and provided within the curtilage of the site shall be made available for the use of employees and/or customers to the premises at all times the premises are in use.
- 4) No more than 225 customers shall be within the restaurant at any time.
- 5) Within 3 months of this consent, an updated Travel Plan/ Management Strategy for the restaurant shall be submitted to and approved by the Local Planning Authority. This shall include measures to promote the use of alternative modes of transport to the private car, a timetable for implementation and details of the mechanisms for implementation, monitoring and updating. The Travel Plan shall be implemented in accordance with the approved details and timescale and the site shall be operated and managed in accordance with the updated and approved Travel Plan/ Management Strategy including the approved implementation timetable.