



Appeal Decision

Site visit made on 25 July 2024

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal Ref: APP/V4250/W/24/3336470

150 Ormskirk Road, WIGAN WN5 9ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Sanjeevan Satkunanathan against the decision of Wigan Metropolitan Borough Council.
- The application Ref is A/23/96266/VAR.
- The application sought planning permission for change of use at ground floor of existing dwelling to form extended floor space to neighbouring A1 retail unit and install access ramp to existing front entrance without complying with a condition attached to planning permission Ref A/09/73373, dated 15 September 2009.
- The condition in dispute is No 4 which states that:
The ground floor A1 shop, hereby approved, shall only be open for trade or business during the following hours of Monday to Sunday 06:00 – 22:00 hours.
- The reason given for condition 4 is:
To safeguard the amenities of the adjoining premises and the area generally, having regard to Policy G1A of the replacement Wigan UDP.

Decision

1. The appeal is allowed and planning permission is granted for change of use at ground floor of existing dwelling to form extended floor space to neighbouring A1 retail unit and install access ramp to existing front entrance at 150 Ormskirk Road, Wigan WN5 9ED, in accordance with application Ref A/23/96266/VAR, without compliance with conditions numbers 1, 3, 4 and 6 previously imposed on planning permission Ref A/09/73373, dated 15 September 2009 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the details shown on plan reference TRI-0478/3 Rev A, received on 05.11.2009, and TRI-0478/2 Rev A, received on 06.11.2009.
 - 2) The ground floor A1 shop, hereby approved, shall only be open for trade or business between the following hours:
7:00am to 11:00pm Mondays to Sundays
8:00am to 10:30pm on Christmas Day.
 - 3) Notwithstanding the annotation on the approved plan, prior to the commencement of any development, a full detailed scheme of insulation to the ground floor party wall adjoining the residential property of no.154

Ormskirk Road shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in accordance with the approved scheme before first occupancy.

- 4) The waste storage area as indicated on approved plan ref TRI-0478/2 Rev A shall be kept clear from all obstructions and shall be retained for the specific purpose of providing a waste storage area for the retail unit at all times.

Background and Main Issue

2. To protect the living conditions of surrounding occupiers, condition 4 of permission A/09/73373 restricts trading at the Fortune Convenience Store to between the hours of 6:00am to 10:00pm every day. The appeal seeks to alter condition 4 to allow the shop to open during the following hours:
7:00am to 11:00pm on Sunday to Thursday,
7:00am to midnight on Friday and Saturday,
8:00am to 10:30pm on Christmas Day.
3. The appellant has advised that the shop has been opening during these times for the last 3 years, and when visiting the area, I saw that those hours are advertised on the front door of the shop. The proposal would therefore regularise the existing situation, which is in breach of condition 4.
4. The main issue is the effect of varying the opening hours on the living conditions of neighbouring residents.

Reasons

5. Ormskirk Road (A577) is a main route from the M6 motorway into Wigan town centre, but the area around the appeal site is predominately residential in character. The single carriageway road is lined with terraced houses, interspersed with commercial uses.
6. There are many businesses in the vicinity of the appeal site, but according to the Council they generally do not open after 10:00pm. Having visited the area, and noted the types of businesses operating locally, I have no reason to dispute this. However, an exception appears to be the One Stop Shop, located on Norfolk Street some 75m from the appeal site, which has no opening hours restriction. Its trading hours are advertised as being 7:00am to 11:00pm daily.
7. The Fortune Convenience Store is already operating at the opening hours proposed in this appeal. Whilst the Council's Environmental Health officer has made no objection to the proposed change to condition 4, the occupier of the adjacent residential property has done. The neighbour has described noise and disturbance associated with the store's opening which adversely affects their sleep late at night and early in the morning, to the detriment of their health and well-being. Issues reported include visitors to the store talking loudly late at night, leaving vehicle engines running, banging car doors and playing music.
8. The proposed revision to condition 4 would allow the store to continue to open until midnight on Fridays and Saturdays, but it is apparent from the neighbour's letter that current activity is having a detrimental impact. By midnight, most people will have already gone to bed, and be asleep or settling down to sleep. Background noise associated with traffic and other activity along Ormskirk Road is likely to have reduced. At this time of night, comings and

goings by customers to the store have the potential to cause significant disturbance for nearby occupiers, with impacts on sleep and well-being, as described by the neighbour.

9. I note that the appellant has been granted a licence to sell alcohol until midnight on most days of the year, but that was issued under a different regime. Whilst there may be some overlap with planning considerations, the existence of a licence does not automatically mean that such late night opening is also acceptable. Given the close proximity to residences, and taking into account the comments from the neighbour, allowing the store to continue opening until midnight on Fridays and Saturdays would fail to safeguard the living conditions of nearby residents.
10. In their appeal statement, the appellant has indicated that their primary concern is to compete on equal terms with the nearby One Stop Shop, which opens until 11:00pm. To this end, they have proposed an alternative version of condition 4, which would limit operating hours to between 7:00am and 11:00pm on Monday to Sunday, with reduced hours on Christmas Day. Removing midnight opening on Fridays and Saturdays would reduce the potential for noise and disturbance very late at night on those days, and would be an improvement for local residents compared with the situation as currently operating.
11. I acknowledge that allowing the store to open until 11:00pm still has the potential to cause noise and disturbance, but the effect will be less severe than opening until midnight. I note the Council's desire to limit opening of businesses in this area until 10:00pm to protect amenity, but Ormskirk Road is a main arterial route, and despite its residential character, there will inevitably be some traffic and general activity until quite late in the evening. In the vicinity of the appeal site there are also likely to be movements associated with the nearby One Stop Shop, which is very close by.
12. I am also mindful that the proposed change to condition 4 would put back the morning opening from 6:00am until 7:00am, so there would be no overall increase in the hours in which the store could open. Whilst longer opening could continue until 11:00pm in the evening, there would be reduced potential for disturbance to neighbouring occupiers at a sensitive time in the early morning.
13. Having regard to those circumstances, I conclude that the proposal to vary condition 4 to allow the store to open between 7:00am and 11:00pm each day would be acceptable, and shorter opening on Christmas Day would be a benefit. The proposal would support the existing business, without causing additional unacceptable harm to the living conditions of neighbouring occupiers, when compared with the authorised position.
14. The neighbour has highlighted some additional concerns regarding with the operation of the Fortune Convenience Store. However, littering is primarily a management issue, which could be addressed by measures such as regular tidying, signage and putting a bin outside the unit. Any failure to undertake noise mitigation measures required as part of previous planning consents, such as party wall insulation or positioning of air conditioning units, are matters for the Council.

15. In light of the above considerations, I conclude that the proposed variation of condition 4, as detailed in the appellant's appeal statement, would not result in unacceptable harm to the living conditions of surrounding residents. As such, it would comply with Policy CP 17 of the Wigan Local Plan Core Strategy 2013 and Saved Policy S1E of the Wigan Unitary Development Plan 2006, which together require that developments, including small shops, do not have an unacceptable effect on the amenity and quality of life of existing uses. The proposal would also be consistent with the objective of protecting amenity in paragraph 135 (f) of the National Planning Policy Framework.

Conditions

16. In allowing this appeal to vary condition 4 of permission ref A/09/73373, a new grant of planning permission for the extension of the shop unit is created. For the avoidance of doubt, the original grant of permission still stands.
17. It is not necessary to repeat condition 1 of the original permission, as the development is already operational. Conditions 3 and 6 have been complied with and are also no longer required.
18. In the interests of certainty, I have reimposed condition 2 (renumbered 1), which specifies plans. I have used the shortened wording suggested by the Council, which omits text which is no longer needed.
19. Condition 4, which is the subject of this appeal, remains reasonable and necessary to safeguard the living conditions of neighbouring occupiers. With a minor wording change to improve precision, I have imposed the condition (now condition 2), with the revised opening hours proposed by the appellant.
20. Condition 5 of A/09/73373 requires the approval and implementation of a scheme of insulation to the ground floor party wall adjoining 154 Ormskirk Road. Given the neighbour's comments, there is uncertainty as to whether this pre-commencement condition has been complied with. I have therefore reimposed it (renumbered as condition 3), to safeguard living conditions.
21. Original condition 7 requires the waste storage area indicated on the approved plan to be kept clear at all times. This condition remains necessary to safeguard the quality of the environment and the amenity of neighbouring occupiers, so I have reimposed it (renumbered condition 4).

Conclusion

22. For the reasons given, the appeal is allowed subject to the conditions set out.

R Morgan

INSPECTOR