



Appeal Decision

Site visit made on 29 October 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th December 2024

Appeal Ref: APP/V4250/W/24/3346568

36-38 Sandy Lane, Lowton, Wigan WA3 1DR

- 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 & Mrs Pont against the decision of Wigan Metropolitan Borough Council.
- The application Ref is A/23/96586/VAR.
- The application sought planning permission for the change of use to the storage of fairground rides, vehicles and associated apparatus without complying with a condition attached to planning permission Ref A/20/89078/RET, dated 11 May 2022.
- The condition in dispute is No 1 which states: *No loading/unloading or manoeuvring of fairground equipment and other associated paraphernalia on the site shall take place on a Sunday or outside the hours of 0700h to 2300h on any other day.*
- The reason given for the condition is: *To prevent certain activities during the night to safeguard neighbouring living conditions.*

Decision

1. The appeal is allowed, and planning permission is granted for the change of use to the storage of fairground rides, vehicles and associated apparatus at 36-38 Sandy Lane, Lowton, Wigan WA3 1DR in accordance with the application Ref A/23/96586/VAR, without compliance with condition number 1 previously imposed on planning permission Ref A/20/89078/RET dated 11 May 2022 and subject to the following conditions:
 - 1) No loading/unloading or manoeuvring of fairground equipment and other associated paraphernalia on the site shall take place outside the hours of 0700h to 2300h on any day.
 - 2) The Rating Level (as defined in British Standard 4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound) shall not exceed background (LA90 +0dB) levels at any time.

Background and Main Issue

2. Planning permission was granted on appeal¹ for the change of use of the appeal site for the storage of fairground rides, vehicles and associated apparatus. In allowing the appeal, the Inspector imposed two conditions; the first restricted

¹ Appeal Ref APP/V4250/W/20/3265117

the manoeuvring of fairground equipment and other associated paraphernalia on a Sunday or outside the hours of 0700h to 2300h on any other day. The second, required the Rating Level to not exceed background (LA90 +0dB) levels at any time. Both conditions were imposed to ensure the development did not harm the living conditions of the occupiers of neighbouring properties.

3. The appellant objects to the condition restricting the loading/unloading or manoeuvring of fairground equipment and other associated paraphernalia on a Sunday as they assert that operating their business in accordance with the condition is proving problematic. Events often terminate on a Sunday, which poses a problem if they do not have another event to immediately move onto and they are required to return to the appeal site. In such cases, they have had to park their vehicles/equipment outside their premises on Sandy Lane.
4. Accordingly, the appellant seeks to vary Condition 1 so that the manoeuvring of fairground equipment and other associated paraphernalia can take place seven days a week. They suggest the condition be amended to read: *No loading/unloading or manoeuvring of fairground equipment and other associated paraphernalia on the site shall take place outside the hours of 0700h to 2300h.*
5. The Council indicates that the condition is necessary to prevent an unacceptable intensification of the site/use and to prevent the operations from potentially occurring daily. If this was to occur, they assert the site/use would harm the living conditions of the occupiers of neighbouring dwellings from noise and disturbance seven days a week, with no relief to occupiers.
6. Taking the above into consideration, the main issue is whether the condition is reasonable and necessary in the interests of protecting the living conditions of the occupiers of neighbouring properties, with reference to noise and disturbance.

Reasons

7. The appeal site is an L-shaped parcel of land that contains a workshop and an area of hardstanding used for the storage of fairground equipment, vehicles, trailers and associated paraphernalia connected with the appellants' travelling show business. The appeal site is accessed from Sandy Lane and wraps around the appellants' dwelling (36-38 Sandy Lane) and 34 Sandy Lane. Dwellings also bound the appeal site to the south, while a field bounds the site to the north and east.
8. The fairground equipment and vehicles are stored at the appeal site when not required at an event site. The frequency of movements to and from the appeal site varies, depending on the season and whether the equipment is required for back-to-back events. There is no set pattern to the days/hours in which movements to and from the appeal site take place, and there can often be several weeks without the equipment being moved to or from the site. Consequently, any noise associated with movements to and from the appeal site is irregular and sporadic and there would be periods of time noise emitted from the appeal site would be minimal or absent. The occupiers of neighbouring properties would therefore enjoy periods of "relief" from noise and disturbance associated with the manoeuvring of vehicles and equipment without the requirement to prevent comings and goings on a Sunday.

9. The appellant asserts that if they return to the appeal site on a Sunday, they park their vehicles and equipment on Sandy Lane before moving them onto the appeal site on Monday morning when permitted by the condition. Consequently, noise and disturbance experienced by the occupiers of some neighbouring properties from the parking of vehicles on the highway would be similar to vehicles parking within the appeal site. Therefore, the omission of the Sunday restriction would unlikely lead to an intensification of activity, noise and disturbance in the surrounding area.
10. The Council's Environmental Health department ("EH") consider the restriction to prevent the business from operating on a Sunday to be unnecessary as Condition 2 imposes noise restrictions on the business 7 days a week. Therefore, even if movements occurred on a Sunday, any associated noise and disturbance would be restricted to a level that should not unduly harm the living conditions of the occupiers of neighbouring properties.
11. Interested parties state they have regularly complained about noise from the business. However, I have not been directed to any noise complaints received by EH and EH have not raised concern regarding the site's existing operation.
12. The Inspector, in allowing the appeal for the existing use of the appeal site, stated that a condition preventing loading, unloading and manoeuvring within the site at night-time was necessary to ensure the living conditions of the occupiers of neighbouring properties was not harmed. However, the decision letter provided no reasoning for the restriction of movements on a Sunday. Consequently, even if I were to allow the variation of condition to omit the Sunday restriction, the condition would adhere to the Inspector's requirement that the movements associated with the use would not occur at night.
13. In reference to the main issue, I conclude that the requirement of the condition to restrict movements on a Sunday is not reasonable or necessary in the interests of protecting the living conditions of the occupiers of neighbouring properties, with reference to noise and disturbance. The development without this part of the condition is acceptable and as such it would comply with Policy CP17 of the Wigan Local Plan Core Strategy adopted 2013 and Policy JP-P1 of the Places for Everyone Joint Development Plan Document adopted 2024², which amongst other things, seek to ensure that new development is planned and designed so that it does not have an unacceptable adverse impact on amenity and quality of life, and offers a high level of amenity that minimises exposure to pollution.

Other Matters

14. Interested parties have raised concerns regarding unlawful activities taking place on the appeal site, the potential for future developments, and comparisons between the operation of the appeal site and a nearby industrial estate. However, these are not matters that are applicable to the determination of this appeal. The Council, in assessing the variation of the condition, has not raised concern regarding highway safety. There is no substantive evidence before me to take a different view.

² Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan 2022 – 2039, adopted 21 March 2024

Conditions

15. The revised wording of Condition 1 and the re-imposition of Condition 2 are necessary to ensure the loading/unloading or manoeuvring of fairground equipment and other associated paraphernalia on the appeal site would not unduly harm the living conditions of the occupiers of neighbouring properties.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substitute it with another, and restate the undisputed condition that is still subsisting and capable of taking effect.

A Berry

INSPECTOR