



Appeal Decision

Site visit made on 3 December 2024

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal Ref: APP/M2372/W/24/3346827

The Swan Public House, 542 Bolton Road, Darwen BB3 2JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Umer Zubair against the decision of Blackburn with Darwen Borough Council.
 - The application Ref is 10/24/0337.
 - The development proposed is change of use from a former public house with ancillary first floor residential accommodation (sui generis) to retail class (e) with first floor ancillary residential use by the applicant.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a former public house with ancillary first floor residential accommodation (sui generis) to retail class (e) with first floor ancillary residential use at The Swan Public House, 542 Bolton Road, Darwen BB3 2JR in accordance with the terms of the application, Ref 10/24/0337, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Block/Site Plan 1:500 and 003/01/24/542/@A1.
 - 3) The retail use hereby approved shall not be brought into use until a Servicing Strategy has first been submitted to and approved in writing by the Local Planning Authority. The submitted Strategy should detail the hours of deliveries taken at the site and types and parking arrangements of all service vehicles that are likely to service the retail premises. The development shall thereafter be operated in strict accordance with the approved details.

Applications for costs

2. An application for costs was made by Mr Umer Zubair against Blackburn with Darwen Borough Council. This application is subject of a separate decision.

Preliminary Matters

3. The Council's first and second reasons for refusal relate to location of the proposed development, specifically that it was located outside of a defined centre. However, the site was designated within the Bolton Road Whitehall local centre in January 2024, in the Blackburn with Darwen Local Plan (2024) (LP) prior to the submission and determination of the planning application. The Council has agreed

that this is the case in its final comments, and therefore is not defending reasons for refusal one and two, and I have determined the appeal on this basis.

4. I have amended the description of development in the decision to omit 'by the applicant' for clarity, as this is not a personal planning permission.
5. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. I have consulted the parties on the changes to the Framework and the parties have provided no additional comment. Therefore, I have made my decision based on the evidence before me.

Main Issue

6. The main issue is the effect of the proposal on highway safety, with regard to the provision of parking for delivery vehicles.

Reasons

7. The appeal site is occupied by a former public house located on the pavement edge facing Bolton Road, a busy street containing various shops and other businesses, which runs through Darwen. The road is straight and wide and in a 30mph zone. To the south is Swan Street, a narrow cul-de-sac of terraced properties. To the north is a service road for gardens of adjacent properties. The site does not have any off-street parking. While there are parking restrictions to parts of Bolton Road, there are none immediately to the site's road frontage. There is also a substantial amount of on-street designated parking on the opposite side of the road, and several nearby roads also have unrestricted on-street parking.
8. The proposal subject of the appeal is for the conversion of the former public house with ancillary living accommodation above, to a convenience store at ground floor level with ancillary living accommodation remaining at first floor level, the first floor has no change of use. No significant external works are proposed.
9. The proposal does not include any off-street parking provision so would not meet the Council's car parking standards that require 5 or 7 off-street vehicle spaces for the proposed store and a further 2 spaces for the living accommodation above, as set out by the Council's highways officer in their representation.
10. The former use of the site would likely have had frequent deliveries of items such as food and beverages. Due to the small size of the proposed retail unit, deliveries would be made in smaller service vehicles compared to the larger vehicles likely delivering to a public house. Although delivery vehicles could seek refuge for short periods of time, clear of Bolton Road in the service road to the north, this could block access for other users such as pedestrians using the pavement. Accordingly, this would not be a suitable parking solution. However, the evidence before me suggests that deliveries would occur around 1-2 times each week and last approximately 15 minutes. Servicing the proposal would therefore likely be comparable with its former use.
11. During my site visit, which was a snapshot in time, Bolton Road had a steady flow of traffic and car parking was limited on Swan Street. However other nearby streets and the designated on-street car parking area opposite had ample space and could be utilised for the proposed use.

12. As the former use as a public house, customers may have visited the premises by car and required car parking for extended periods of time. However, due to the scale of the proposed retail unit, it is unlikely that visits would be for prolonged periods of time, therefore car parking spaces would be made available again frequently.
13. Moreover, whilst there is no off-street car or delivery vehicle parking at the site, a bus stop is situated nearby on the same side of Bolton Road, providing a public transport link. In addition, the site is close to many residential properties, including to the same side of the road, so it can be accessed on foot without crossing the road. Those living on the opposite side of Bolton Road, or using the designated car parking provided, can cross the road safely at a pedestrian crossing point a short distance from the site.
14. I am mindful of the former use of the site as a public house and the availability of parking nearby and the interrelationship between bus stops and the carriageway. However, given the scale of the proposed convenience store, there is no compelling evidence before me that delivery vehicles serving the proposal would result in a greater level of harm to the detriment of road safety and the safe, efficient, and convenient movement of highway users. Accordingly, the existing provisions available to service the development would be appropriate in this context.
15. I therefore conclude that the proposal would not have a harmful effect on highway safety, with regard to the provision of parking for delivery vehicles. Hence, it would accord with LP policy DM29, which requires appropriate provision for vehicle access, off-street servicing and parking. Furthermore, would not prejudice road safety of all highway users and would have safe and convenient access from public transport to the store encouraging access on foot or by bicycle.
16. The proposal would also accord with paragraph 116 of the Framework as the proposal would not have an unacceptable impact on highway safety or have severe residual cumulative impacts on the road network.

Other Matters

17. Concerns have been raised regarding the workmanship at the building and the possible signage that might be required for the proposed retail use, however these matters sit outside of the scope of this appeal as this deals with the planning permission for the development only. Therefore, they do not affect the conclusion I have reached.
18. The behaviour of road users has been raised by an interested party specifically relating to parking on yellow lines close to the site. There are safeguards in place through traffic enforcement powers to address the behaviour of road users and protect other road users which sit outside of the planning process. Therefore, this does not weigh against the proposed development.
19. Concerns have been raised regarding the need for a convenience store in this location when other stores are available nearby. The site is located within the Bolton Road Whitehall local centre and therefore this use is compatible with that designation and compliant with policy DM34 of the LP which states that local shopping opportunities and facilities within Local Centres will be supported and safeguarded where possible. Therefore, this does not weigh against the proposal.

20. An interested party has raised the issue of the presence of the brand of convenience store proposed and produce sold. The application is for a retail use within that use class and does not specify the exact produce sold, therefore that sits outside of the scope of this appeal. Therefore, this does not affect the conclusion I have reached.
21. An interested party has raised issues regarding air pollution from parked cars and litter created by shops. These matters relate to the behaviours of individuals and may not directly result from the proposed use. Therefore, these matters do not affect the conclusion I have reached.

Conditions

22. The Council and the appellant have suggested conditions that both parties have had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments for consistency and clarity purposes. In addition to the standard time condition, in my judgement, a condition is also necessary in respect of ensuring the development is carried out in accordance with the approved plans.
23. The Council's highways officer recommended a condition relating to the imposition of a road traffic order between the site and the junction with Queens Road in order to minimise the impact of parking on the highway. However, based on the reasons mentioned in the main issues and given that it was not indicated as necessary by the Council's planning officer in their appeal documents, I do not consider that the suggested condition is necessary in this instance.
24. The Council has suggested a condition relating to a highways servicing strategy, I have modified this condition to include hours of delivery to be incorporated into the strategy. This could ensure that deliveries take place at the most suitable times avoiding busy periods. The condition also includes the types of vehicle and parking arrangements for them. The Council has stated that to include types of service vehicles and delivery times would require an unrealistic level of monitoring to be effective, but its own condition included such requirements. Furthermore, I do not consider the restriction of delivery hours to be unreasonable, particularly in built up areas such as this. Therefore, I consider that the condition is enforceable and necessary in the interests of highway safety.
25. A condition has been suggested by the Council's environmental health officer relating to opening hours of the proposed retail unit. This condition was not indicated as necessary in the appeal documents by the Council's planning officer. I am also mindful of the modest scale of the development and existing safeguards available through other legislation to protect surrounding residents from nuisance. Hence, I do not consider that this suggested condition is necessary in this instance.

Conclusion

26. For the reasons set out having regard to the development plan as a whole and all other matters raised, the appeal is allowed.

N Duff
INSPECTOR