



Appeal Decision

Site visit made on 9 October 2025

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th November 2025

Appeal Ref: APP/K3415/W/25/3365066

52 Thornhill Road, Streetly, Walsall, Staffordshire B74 3EH

- 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 Lee Koumides against the decision of Lichfield District Council.
 - The application Ref is 24/00618/FUL.
 - The application sought planning permission for change of use from shop to restaurant without complying with a condition attached to planning permission Ref 08/00191/COU, dated 15 April 2008.
 - The condition in dispute is No. 4 which states that: Before the development is brought into use the existing bollards on the site frontage to Thornhill Road shall be relocated to give a 5 metre minimum length of car parking bays rear of the public highway.
 - The reason given for the condition is: In the interests of highway safety and to comply with Staffordshire County Council requirements for access in accordance with the requirements of Policy T13 of the Structure Plan and Policy DC1 of the Local Plan.
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Decision

1. The appeal is dismissed.

Background, Procedural Matters and Main Issues

2. The Council granted planning permission at the appeal site for change of use from a shop to a restaurant¹. In the interests of highway safety, that permission was subject to a condition requiring the relocation of existing bollards to give a 5-metre minimum length of car parking bays rear of the public highway prior to the development being brought into use (hereon referred to as the disputed condition).
3. The evidence before me suggests that the area to the front of the appeal property, where the car parking bays referred to in the disputed condition are located, has since 2020 been used regularly as an outside seating area to serve the customers of the restaurant.
4. The appellant wishes to regularise this by varying the disputed condition. As such, the application subject to this appeal explicitly sought to take away the requirement that the area to the front of the appeal property is used for car parking spaces and that it can be used for customer seating instead.
5. The Council refused the application for variation of condition², as it considered the loss of the car parking bays would compromise highway safety and the proposed outside customer seating area would harm the character and appearance of the area and the living conditions of nearby residents. The appellant disputes this and

¹ Council Reference 08/00191/COU

² Council Reference 24/00618/FUL

contends that the outside seating area has operated for 4 years without enforcement or significant complaint. However, it is not my role in determining this appeal under section 73 of the Act to make a determination on this matter. If the appellant wishes to ascertain whether any such development is lawful, they are able to make an application to the Council under section 191 or 192 of the Act.

6. The disputed condition before me in this appeal does not prohibit the area to the front of the appeal property from being used as a customer seating area. It also does not require the availability or retention of the car parking bays to the front of the appeal property. Neither do any of the other conditions imposed on the permission require this. Consequently, there is no mechanism to ensure the car parking bays are retained and available for the parking of vehicles.
7. Neither party has made any suggestion as to how the disputed condition could be redrafted to provide the proposed outside customer seating area. Planning Practice Guidance (PPG) advises that there is no statutory limit on the degree of change permissible to conditions under Section 73, but the change must only relate to conditions and not to the operative part of the permission³. In this case, allowing the area to the front of the appeal property to be used as an outside customer seating area would not conflict with the operative part of the permission.
8. Against this background and procedural matters, the main issue in this appeal is therefore whether the disputed condition can be redrafted to explicitly allow the proposed outside customer seating area.
9. For the reasons that follow it is not necessary or appropriate for me to go on to consider the effect of such redrafting on highway safety, character and appearance or living conditions. As I am dismissing the appeal I am satisfied that no party has been prejudiced by this approach.

Reasons

10. Plans of the proposed outside customer seating area were submitted to support the application to vary the disputed condition. Ordinarily, amendments to an existing planning permission, such as this, would be achieved by varying the condition listing the originally approved plans to reflect the amended plans.
11. In this case, the permission did not include a condition listing the originally approved plans, which may be the reason that the application sought a variation of the disputed condition rather than the approved plans condition.
12. The Council has suggested that a new condition could be imposed to ensure that the development is carried out in accordance with the proposed plans. However, while Section 73 of the Act allows the imposition of new conditions, the PPG explains that this is provided that the new conditions could have been imposed on the earlier permission⁴. In this case, a condition requiring accordance with the proposed plans could not have been imposed on the earlier permission, as it would have conflicted with the approved plans listed as part of the original permission. Consequently, the disputed condition cannot be redrafted in this way.
13. The PPG does offer further advice as to how this situation could be addressed. A separate application for full planning permission could also be submitted.

³ Paragraph: 013 Reference ID: 17a-013-20230726

⁴ Paragraph: 040 Reference ID: 21a-040-20190723

However, this would be a matter for the parties and could not be addressed through the appeal process.

Conclusion

14. While the disputed condition does not prohibit the front of the appeal property from being used as an outside customer seating area, the appellant has requested the disputed condition be varied to explicitly allow the front of the appeal property to be used as such. Nevertheless, any variation to the disputed condition could not specify the amended plans. The disputed condition cannot therefore be redrafted to achieve what the appellant is seeking. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR