

APPLICATION REPORT – 24/00530/FUL

Validation Date: 8 July 2024

Ward: Chorley North East

Type of Application: Full Planning

Proposal: Section 73 application to vary condition 3 (rear elevation door) and remove condition 5 (use of rear yard) of planning permission ref: 08/00275/FUL (Variation of condition 4 of planning permission 06/01017/FUL to vary the opening hours to 10:00 - 16:00 Monday to Friday, 10:00 - 23:00 Saturday, and 10:00 - 16:00 Sunday) to allow the rear yard to be used as a customer seating area in conjunction with the cafe

Location: The Cottage Tea Room 25A School Lane Brinscall Chorley PR6 8QS

Case Officer: Chris Smith

Applicant: Mr Robin Bamford

Agent: N/A

Consultation expiry: 29 July 2024

Decision due by: 13 September 2024 (Extension of time agreed)

RECOMMENDATION

1. It is recommended that the application is refused for the following reason:

The use of the rear yard as a customer seating area would lead to an unacceptable increase in noise and disturbance and it is not considered that satisfactory mitigation measures could be put in place to reduce any detrimental impact on neighbouring residents and, therefore, the proposal to vary and remove conditions preventing the use of the yard as a customer seating area would be unacceptable. This would be contrary to policy BNE1(g) of the Chorley Local Plan 2012 - 2026.

SITE DESCRIPTION

2. The application site is located within the Brinscall Local Centre as defined by the Chorley Local Plan 2012-2026 in the settlement area of Brinscall on the southern side of School Lane. The site is a single storey building located at the eastern end of a row of terraced dwellinghouses and adjacent to two modern detached dwellings. The building is currently in use as a café. It has a stone frontage and the main entrance for customers is from School Lane. Whilst the most immediate locality on either side of the site is residential, a variety of small commercial businesses are located further along School Lane to the west of the site including a butchers, post office and a public house.

DESCRIPTION OF PROPOSED DEVELOPMENT

3. The application is a Section 73 application that seeks planning permission to vary the wording of condition 3 (the rear door) and to remove condition 5 (use of the rear yard) which are attached to planning application ref: 08/00275/FUL.

4. The conditions read as follows:

3. The door hereby approved in the rear elevation shall be kept closed at all times during the permitted opening hours, other than for the access/egress of persons.

- Reason: In the interests of the amenities of occupiers of neighbouring properties and in accordance with Policy No. EP20 of the Adopted Chorley Borough Local Plan Review.*

5. The rear yard area shall not be used by customers or guests for uses incidental to the occupation of the café as an A3 use.

- Reason: To safeguard the amenities of local residents and in accordance with Policy No. EP20 of the Adopted Chorley Borough Local Plan Review.*

5. The variation and removal of conditions 3 and 5 respectively would enable the yard located at the rear of the building to be utilised as an outside customer seating area in conjunction with the café. A proposed site plan has been submitted with the application showing that the yard would be able to accommodate three seating benches.
6. It should be noted that the application does not seek any variation to the opening hours of the café.

BACKGROUND INFORMATION

7. The application site has a relatively complex and detailed planning history summarised as follows. The café/tearoom received planning permission under planning permission ref: 06/01017/FUL in November 2006. This was subject to a number of conditions including restrictions on the door in the rear elevation being kept closed during operating hours as well as operating hours being restricted to between 10:00 and 16:00 on Saturdays and Sundays only and no outdoor seating to be created in the area to the rear of the building. The reason for these restrictions was to safeguard the amenity of neighbouring residential occupiers.
8. A further application was submitted in 2008 (app ref: 08/00275/FUL) seeking to vary condition 4 of planning permission 06/01017/FUL to extend the opening hours to 10:00 to 16:00 Monday to Friday, 10:00 to 23:00 Saturday, and 10:00 to 16:00 on Sundays. Although planning permission was granted, this was on the condition that opening hours were restricted to between 10:00 to 16:00 Monday to Friday, 10:00 to 18:00 on Saturday and 10:00 to 16:00 on Sunday. Conditions requiring that the door in the rear elevation should be kept closed during operating hours and preventing the rear yard area from being used by customers, were retained.
9. An appeal (appeal ref: APP/D2320/A/98/2088793) was then submitted against the imposition of the conditions relating to conditions 3 and 5 attached to planning application ref: 08/00275/FUL. However, the appeal was dismissed, and the conditions attached the planning permission ref: 08/00275/FUL were retained with the inspector agreeing with the Council's concerns about residential amenity impacts. The inspector considered that the controls were necessary to protect residential amenity.
10. It is the Council's understanding that the business is currently operating under the terms of planning permission ref: 08/00275/FUL. A more recent planning application was submitted to the Council in 2014 (app ref: 14/00741/FUL) which sought planning permission for a single storey extension to the rear of the building and an extension of the opening hours. This application was refused by the Council's Development Control Committee due to the impact of the extension on the amenity of neighbouring occupiers, harm to highway safety and harm to residential amenity through noise and disturbance associated with longer hours.

REPRESENTATIONS

11. A representation has been provided by Rt Hon Sir Lindsay Hoyle MP in support of the application.

12. Twenty-six representations have been received making the following comments in support of the application –

- As the direct neighbour to the Tea Room I confirm that I have no objections to the proposed outdoor seating application and I am happy to support the application.
- The Brinscall tearooms is a lovely café within the community.
- It is popular with walkers and cyclists who visit the area to appreciate its beauty.
- The proposal would be an asset to the café and would be very popular with the clientele.
- As a Brinscall resident, I would welcome the addition.
- The café has been a great benefit to the village and the placing of a few tables and chairs outside can only enhance its importance to the local community.
- A terrific business and deserves to do well.
- An outside seating area would be an asset to the premises and would not impact on neighbours at all.
- The tea rooms is a lovely café but gets extremely busy and an outside seating area will enhance its offering.
- Use of the rear yard for a few extra tables will help the business to accommodate a few additional customers and would not impact any of the surrounding properties.
- More seating would be welcome for when the tearoom is busy.
- The tearoom is an important community resource.

13. Three representations have been received citing the following grounds of objection to the application –

- Noise and disturbance.
- Parking.

CONSULTATIONS

14. Chorley Council's Environmental Health Officer – Have stated that the conditions which the application seeks to vary are reasonable and necessary in the interest of protecting the living conditions of neighbouring occupiers.

15. Lancashire County Council Highway Services – No comments have been received.

16. Withnell Parish Council – No comments have been received.

PLANNING CONSIDERATIONS

Procedural matters

17. Planning Practice Guidance recognises that new issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. However, where less substantial changes are proposed, one of the options is to make an amendment under s73 of the Town and Country Planning Act 1990 where there is a relevant condition that can be varied.

18. Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

19. A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

Assessment

Impact on the amenity of neighbouring occupiers

20. Policy BNE1 of the Chorley Local Plan 2012 – 2026 states that planning permission will be granted for new development, including extensions, conversions and free-standing structures, provided that:
- g) the proposal would not cause an unacceptable degree of noise disturbance to surrounding land uses.
21. Condition 3 requires that the rear door of the building, which gives access to an open rear yard, is kept closed other than when someone is passing through it. The café is small, having 6 tables and seating for just 16 people. However, there would be the potential for noise to be created inside through the movement and conversation of customers and staff, and from the handling of crockery and furniture. No statistical data or noise assessment has been submitted with the application, however, subjectively it is expected that if the door were to be open such noise would be audible outside, including at the neighbouring properties. It is considered that the amount of noise, and the period of the day over which it could be generated, would be substantially greater than if the premises were in normal domestic use, or indeed in the previous use as a hairdressers, when no rear door existed. It is considered that if condition 3 was to be varied to allow the door to remain open, noise breakout from the building would increase substantially and to the extent that it would have a detrimental and unacceptable adverse impact upon the existing levels of amenity currently enjoyed by neighbouring residents.
22. At the back of the café there is a small area that has been laid out with paving stepping up to the rear, together with some planting. It is proposed to use this area as a customer seating area. However, for the same reasons as outlined above in respect to the variation of condition 3, it is considered that if this area was to be used by customers in conjunction with the café, it would have the potential to affect the living conditions of neighbours as a result of noise and disturbance which would be created as a result of conversation, laughter and the movements of customers in the yard. The plan submitted with the application indicates that the yard would be able to accommodate three seating benches each capable of seating 6 customers. It is considered that the use of the yard for the seating of up to 18 customers, would exceed the level and intensity of use that would be expected in a normal residential garden.
23. On a visit of the application site, it was observed that the side elevation of the neighbouring property to the west of the site at no. 27 School Lane has a ground floor window. There is no planning history to indicate when this was installed. However, it was in-situ at the time of planning application 08/00275/FUL and, therefore, it is lawful, and it will remain in place meaning that its existence is a material consideration in this case. Timber panel fencing has been erected in front of the window. While the fence affords a degree of privacy for the occupiers of the neighbouring property, it is not considered that it can adequately mitigate any of the impacts identified above relating to noise and disturbance.
24. It is noted that the view outlined above in respect of both conditions, was taken by the Council in the determination of planning application refs: 06/01017/FUL and 08/00275/FUL and also that an appeal to remove the conditions was dismissed (appeal ref: APP/D2320/A/98/2088793). The inspector for the appeal concluded that it was both reasonable and necessary for the Council to impose the conditions in order to protect the living conditions of the neighbours. It is acknowledged that representations in support of the proposed development have been received including from one of the neighbouring properties at no. 27 School Lane. However, given that the circumstances and layout of the application site have not been altered since the time of the appeal, and no new measures have been proposed to mitigate the impacts as a result of noise and disturbance, it is not considered that it is possible to deviate from the view previously held by the Council and the Planning Inspector, which represent key material planning considerations in the determination of this application.

25. Consequently, it is considered that the variation and removal of the conditions as proposed, in order to facilitate the use of the rear yard as a customer seating area, would have a detrimental and unacceptable adverse impact on neighbouring amenity as a result of the additional noise and disturbance which would inevitably occur.

Parking and highway safety

26. Policy BNE1 of the Chorley Local Plan 2012 -2026 stipulates that planning permission will be granted for new development, including extensions, conversions and free-standing structures, provided that:
- d) the residual cumulative highways impact of the development is not severe and it would not prejudice highway safety, pedestrian safety, the free flow of traffic, and would not reduce the number of on-site parking spaces to below the standards stated in Site Allocations Policy – Parking Standards, unless there are other material considerations which justify the reduction.
27. Policy ST4 of the Chorley Local Plan 2012-2026 requires that proposals for development need to make parking provision in accordance with the standards set out in Appendix A of the Local Plan. Appendix A identifies the Council's minimum parking standards for restaurants and cafes in all other areas outside Chorley Town Centre as being 1 space per 5sqm of public floorspace. This policy does provide some flexibility in the parking standards and locations that are considered to be more sustainable and well served by public transport may be considered appropriate for lower levels of provision.
28. The site does not contain any parking provision, and the application does not propose any. At present the floor space of the business amounts to approximately 33 square metres. The use of the rear yard as a customer seating area, could potentially attract some new customers and generate an additional demand for parking. However, the application site enjoys a rural village setting, and apart from leisure visitors to the area, the cafe is likely to attract new customers from the locality who will likely walk to the premises. For this reason, it is envisaged that the proposed use would not result in any significant change to existing parking patterns in the immediate locality.
29. Overall, it is not considered that the proposed development would prejudice highway or pedestrian safety or have any adverse impact on highway safety or capacity.

CONCLUSION

30. The use of the rear yard as a customer seating area would lead to an unacceptable increase in noise and disturbance and it is not considered that satisfactory mitigation measures could be put in place to reduce any detrimental impact. This would be contrary to policy BNE1(g) of the Chorley Local Plan 2012 - 2026.

RELEVANT POLICIES: In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/guidance considerations are contained within the body of the report.

RELEVANT HISTORY OF THE SITE

Ref: 04/01165/FUL **Decision:** PERFPP **Decision Date:** 8 December 2004
Description: Alterations to shop front

Ref: 05/01166/FUL **Decision:** REFFPP **Decision Date:** 13 February 2006
Description: Two storey rear extension and 1st floor added

Ref: 06/01017/FUL **Decision:** PERFPP **Decision Date:** 9 November 2006
Description: Alterations to existing hairdressers to form new cafeteria

Ref: 08/00275/FUL **Decision:** PERFPP **Decision Date:** 30 April 2008
Description: Variation of condition 4 of planning permission 06/01017/FUL to vary the opening hours to 10:00 - 16:00 Monday to Friday, 10:00 - 23:00 Saturday, and 10:00 - 16:00 Sunday

Ref: 11/00975/FUL **Decision:** PERFPP **Decision Date:** 23 December 2011
Description: Installation of 10.no photovoltaic (PV) panels on the south facing roofpitch

Ref: 14/00741/FUL **Decision:** REFFPP **Decision Date:** 17 December 2014
Description: Single storey extension to rear of existing cafe and extension of opening hours to : Monday, Tuesday, Wednesday, Friday & Sunday: 10.00 - 17:00 and Thursday & Saturday: 10:00 - 2200