

APPLICATION REPORT – 21/01294/FUL

Validation Date: 2 November 2021

Ward: Chorley North East

Type of Application: Full Planning

Proposal: Section 73 application to vary condition no.3 (hours of operation) attached to planning permission 20/01337/FUL (Conversion of subterranean void space beneath the existing building and associated construction works to provide cafe / day spa facilities (retrospective)) to allow longer opening hours on Fridays and Saturdays to between 09:00 and 23:00 hours

Location: Whins Green Kitchen Whins Lane Wheelton Chorley PR6 8HN

Case Officer: Mr Iain Crossland

Applicant: Lesley Barrow

Agent: Mr Doug Purnell, DP Architectural Services Ltd

Consultation expiry: 30 November 2021

Decision due by: 14 January 2021 (Extension of time agreed)

RECOMMENDATION

1. It is recommended that planning permission is granted subject to conditions.

SITE DESCRIPTION

2. The application site is located in the Green Belt, on Whins Lane, Wheelton. The site consists of a contemporary split level detached building with flat roof that is in use as a holistic spa and café. There is an associated car park, with vehicular access from Whins Lane, between the building and the highway, and an open terrace to the north east side. The building opens out onto open land to the north east, which slopes down away from Whins Lane culminating in an attractive outlook over the valley containing the River Lostock and Leeds Liverpool Canal. As such the building elevation is lower on the eastern side than the west, where it has been designed to overlook the valley in response to the change in levels.
3. There is a converted barn to the south west of the application building that is in the ownership of the applicant, and beyond which are three further dwellings. Other dwellings are located a substantial distance further from the site.
4. The character of the area is largely open agricultural land punctuated by dwellings and buildings of agrarian origins. The lies between and within walking distance of the settlements of Wheelton and Higher Wheelton.

DESCRIPTION OF PROPOSED DEVELOPMENT

5. This application seeks consent to vary condition no.3 (hours of operation) attached to planning permission 20/01337/FUL, which was for the conversion of a subterranean void space beneath the existing building and associated construction works to provide cafe / day spa facilities, to allow longer opening hours on Fridays and Saturdays to between 09:00 and 23:00 hours.

6. It is noted that there is a concurrent application (ref. 21/00688/FUL), which reflects this application and seeks to vary condition no.4 (hours of operation) attached to planning permission 19/01030/FUL, which was for the change of use from a holistic spa to a holistic spa and café, to allow longer opening hours on Fridays and Saturdays to between 09:00 and 23:00 hours.
7. The applications effectively apply to different parts of the same building and, therefore, it is appropriate that the associated conditions of each application should be addressed simultaneously so as to avoid ambiguity.

REPRESENTATIONS

8. One representation has been received citing the following grounds of objection:
 - Increased disturbance from the existing use of the premises, but opens up the potential for further intensification by allowing scope for evening-type uses including weddings, parties, live performances, outdoor cooking/BBQs etc. In either case the extended hours will inevitably lead to additional noise impact during the quieter evening hours.
 - The application has not been accompanied by any form of acoustic assessment to determine the impact of additional noise during the late evening period. On this basis, no objective determination of the application can be made that the use will not lead to unacceptable noise and disturbance on nearby receptors.

CONSULTATIONS

9. Wheelton Parish Council: make no objections but raise the concern that they had already stated concerns around development by stealth. There is an issue with carparking on the provision of having extended business hours meaning that people would be parking outside houses on the road.
10. Regulatory Services - Environmental Health: Have no objections to this application. As an established business there have been no noise complaints regarding the existing activities and the extension applied for is limited to evenings at weekends. A noise assessment would be of limited value in this application so is not requested in this case.

PLANNING CONSIDERATIONS

11. The application building replaced an existing workshop and store, and was granted planning permission under references 18/00357/FUL and 18/01017/FUL, originally to be solely used as a health spa. In December 2019 planning permission was granted to accommodate a café alongside the spa facility under reference 19/01030/FUL, whilst further consent was granted for the use of a void space beneath the building in February 2021 (ref. 20/01337/FUL). The planning history alone demonstrates that the business has diversified and expanded over a fairly short period of time.
12. The success of the business and its diversification to include a café has led to an increased intensity in the use of the site and now the applicant is seeking to manage this increased trade through the current application to extend the opening hours on Fridays and Saturdays later into the evenings on those days.
13. Planning permission 20/01337/FUL, which was for the conversion of a subterranean void space beneath the existing building included a condition that set the hours of operation to between 09:00am and 19:00pm Mondays to Saturdays and 09:00am to 16:00pm on Sundays to safeguard the amenities of local residents. The applicant now seeks to extend this to allow for later opening hours up to 23:00 hours on Fridays and Saturdays.
14. It is noted that the use of the application site includes the possibility of using outdoor areas, and that tables and chairs are set out for customers of the café to use on a terrace area to the north east of the building. The use of this outdoor area has the greatest potential for noise generation from customers of the café. It is also noted that an outdoor seating area

has been set out on the land to the north west of the building that is understood to be for customers of the spa to use. The use of this area also has some potential for noise generation and is closer to the nearest dwelling at Whins Farm with no intervening buildings. As such there is the possibility for disturbance to the occupiers of Whins Farm, during those more sensitive times of the day, which this application seeks the ability to use, particularly when residents are using garden areas.

15. Other potential noise sources are from customers leaving and entering the premises and from vehicle movements in the car park. It should, however, be noted that all of these activities already occurs up to 7pm in the evenings and into the weekends at present.
16. The nearest noise sensitive receptor is at Whins Farm to the south west of the site, beyond the dwelling at Whins Barn. This dwelling is shielded from the site to some extent by the neighbouring Whins Barn, although the garden area to Whins Farm is rather more open towards the application site at the rear. The open terrace area where outdoor dining takes place is, however, situated on the opposite side of the application building from Whins Farm and is over 30m away. Given the degree of separation and screening provided by the application building this prevents any adverse privacy impacts, and is also an effective screen from the noise that is currently generated by customers dining on the terrace. The car parking area is well screened from Whins Farm by Whins Barn, which provides a good level of acoustic protection against disturbance from vehicles accessing this area.
17. It is noted that there are concerns regarding noise disturbance from the later operation of the business, and that the requirement for a noise assessment has been suggested. The application has been considered by the Council's environmental health officer (EHO), who confirms that there have been no noise complaints or enquiries relating to this premises from the current use. The extended hours requested for the operation of the site would not extend into the night-time. The Council's EHO considers that the nature of the activity means that the noise levels or any potential perceived disturbance is likely to be very dependent on the clientele on any given day, therefore, noise assessments are of limited value where the noise varies in intensity and duration in any event.
18. Noise assessments are usually only requested where there is a steady volume/source of noise (such as night-clubs where the predominant activity is the playing of music) and noise insulation measures are likely to be required to prevent structural transmission of noise to residential premises. Furthermore, it is noted that the licensing and statutory nuisance regimes are available if disturbance is reported and the investigation determines the need for control measures.
19. The distance of the outdoor terrace area from the nearest dwellings and the screening provided by the application building and Whins Barn are considered to mitigate the impacts from noise disturbance that may be generated through the operation of the site for the authorised uses. The outdoor seating area to the north west of the building and use of this general area is of greater concern from a noise disturbance perspective given the closer proximity and lack of intervening buildings. Although this may operate without complaint at present, the continued evolution of the site and it's use into the evenings would have the potential for noise disturbance of nearby residential occupiers in what is a quite rural area, given the proximity.
20. Activities within the building itself are effectively controlled and are not considered to present any potential noise disturbance issues, given the nature of those activities and degree of separation. As a result, it is anticipated that the use of the building into the evening hours proposed could operate without adverse impacts on the amenity of neighbouring occupiers. It is not clear, however, that any unrestricted outdoor use could take place without causing adverse noise disturbances. As such it is considered that the use of the building for later hours as proposed would be acceptable, but that outdoor use during these later times should be controlled. It is therefore recommended that a condition is attached to any grant of planning permission that prevents outdoor use during these later hours.

21. Furthermore, it is clear that the nature of the business and use of the premises is evolving and currently leans more towards to the café and restaurant uses that are enabled at present. As such it is considered that any consent to increase the operating hours of the premises should also be accompanied by a condition preventing the playing of music, given the absence of any noise assessment or associated details, and the potential that this might have for neighbour disturbance should this occur. It is recommended that this be controlled by condition.
22. On the basis of the above assessment it is considered that the proposed variation of condition no.3 of planning permission 20/01337/FUL to enable extended hours of operation would have no unacceptable impact on residential amenity and complies with policies EP3 and BNE1 of the Chorley Local Plan 2012 - 2026, subject to further controlling conditions controlling music and outdoor use.

CONCLUSION

23. It is recommended that the application is approved and condition no.3 is varied for the reasons set out above.

RELEVANT HISTORY OF THE SITE

Ref: 17/00743/FUL **Decision:** PERFPP **Decision Date:** 16 November 2017
Description: Erection of a building for use as a holistic spa following demolition of existing workshop and store, conversion of live/work unit to a dwelling, and associated landscaping and access works

Ref: 18/00357/FUL **Decision:** PERFPP **Decision Date:** 13 June 2018
Description: Erection of a building for use as a holistic spa following demolition of existing workshop and store, conversion of live/work unit to a dwelling, and associated landscaping and access works (re-submission of previously approved planning application 17/00743/FUL)

Ref: 18/01017/FUL **Decision:** PERFPP **Decision Date:** 17 December 2018
Description: Erection of single storey side extension to existing holistic spa

Ref: 19/01030/FUL **Decision:** PERFPP **Decision Date:** 19 December 2019
Description: Change of use from holistic spa to holistic spa and café.

Ref: 20/01337/FUL **Decision:** PERFPP **Decision Date:** 4 February 2021
Description: Conversion of subterranean void space beneath the existing building and associated construction works to provide cafe/ day spa facilities (retrospective)

Ref: 21/00688/FUL **Decision:** PDE **Decision Date:** Pending
Description: Section 73 application to vary condition no. 4 (hours of operation) attached to planning permission 19/01030/FUL (Change of use from holistic spa to holistic spa and cafe) to allow longer opening hours on Fridays and Saturdays to between 09:00 and 23:00 hours.

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.

Suggested conditions

No.	Condition
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1.	<p>The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <table border="1" data-bbox="336 277 1321 439"> <thead> <tr> <th data-bbox="336 277 730 309">Title</th> <th data-bbox="730 277 1023 309">Drawing Reference</th> <th data-bbox="1023 277 1321 309">Received date</th> </tr> </thead> <tbody> <tr> <td data-bbox="336 309 730 340">Location plan</td> <td data-bbox="730 309 1023 340">2020-40-L01</td> <td data-bbox="1023 309 1321 340">10 December 2020</td> </tr> <tr> <td data-bbox="336 340 730 371">Site plan</td> <td data-bbox="730 340 1023 371">2020-40-P03</td> <td data-bbox="1023 340 1321 371">10 December 2020</td> </tr> <tr> <td data-bbox="336 371 730 403">Floor plans</td> <td data-bbox="730 371 1023 403">2020-40-P01</td> <td data-bbox="1023 371 1321 403">10 December 2020</td> </tr> <tr> <td data-bbox="336 403 730 439">Elevations</td> <td data-bbox="730 403 1023 439">2020-40-P02</td> <td data-bbox="1023 403 1321 439">10 December 2020</td> </tr> </tbody> </table> <p><i>Reason: For the avoidance of doubt and in the interests of proper planning.</i></p>	Title	Drawing Reference	Received date	Location plan	2020-40-L01	10 December 2020	Site plan	2020-40-P03	10 December 2020	Floor plans	2020-40-P01	10 December 2020	Elevations	2020-40-P02	10 December 2020
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2.	<p>The holistic spa and café business hereby permitted shall only operate between the hours of 09:00 and 19:00 hours Monday to Thursday, 09:00 and 23:00 hours Friday and Saturday and 09:00 and 16:00 hours on Sundays.</p> <p><i>Reasons: To safeguard the amenities of local residents.</i></p>															
3.	<p>No music of any type shall be played or reproduced in the building or on any part of the site hereby permitted.</p> <p><i>Reason: In the interests of the amenity of the area and nearby residential properties.</i></p>															
4.	<p>No outside use shall take place between 19:00 and 23:00 hours.</p> <p><i>Reason: To minimise the risk of disturbance to the amenity of the occupiers of nearby residential properties.</i></p>															