



Appeal Decision

Site visit made on 7 June 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Appeal Ref: APP/U2370/W/22/3291005

Land adjacent Preston Lancaster New Road, A6, Fowler Hill Lane, Cabus, Preston PR3 1AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs K Brooks against the decision of Wyre Council.
 - The application Ref 21/00379/FUL, dated 15 March 2021, was approved on 5 August 2021 and planning permission was granted subject to conditions.
 - The development permitted is permanent siting of a shipping container to be used as a rest stop café (resubmission of planning application 18/00339/FUL) (pursuant to variation of condition 4 (operating hours) on permission ref. 19/00286/FUL).
 - The condition in dispute is No 3 which states that: The use hereby permitted shall not operate outside the hours of 07:00 to 19:00 on any day of the week.
 - The reason given for the condition is: In the interests of the amenity of the surrounding area and to prevent anti-social behaviour at night-time in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31).
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Decision

1. The appeal is allowed and the planning permission Ref 21/00379/FUL for the permanent siting of a shipping container to be used as a rest stop café (resubmission of planning application 18/00339/FUL) (pursuant to variation of condition 4 (operating hours) on permission ref. 19/00286/FUL) at Layby Adjacent Preston Lancaster Road A6, Fowler Hill Lane, Cabus, Lancashire granted on 5 August 2021 by Wyre Council, is varied, by deleting condition no. 3 and substituting for it the following condition:
 - 1) The use hereby permitted shall not operate outside the hours of 07:00 to 22:00 on any day of the week.

Preliminary Matters

2. The address in the banner heading is taken from the application form. However, I have used the address on the Council's decision notice and appeal form in my decision as this more accurately describes the site's location.
3. In order that my decision relates clearly to the development for which planning permission was granted, I have used the description from the Council's decision notice in the banner heading and my decision. For the avoidance of doubt, whilst this description refers to the permanent siting of a shipping container, the permission granted by the Council restricts its siting to 2024.

Background and Main Issue

4. Permission reference 19/00286/FUL was granted in July 2019 for the siting of a shipping container to be used as a rest stop café¹ (the 2019 permission). Condition 4 of the 2019 permission restricts the operational hours to 07:00 to 15:00 Monday to Friday, with no operation at any time on Saturdays, Sundays and Bank and Public Holidays. The reason for the condition is in the interests of the amenity of the surrounding area in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31).
5. The appellant sought to vary condition 4 of the 2019 permission to extend the operational hours to 07:00 to 22:00 on all days of the week including Bank Holidays. The Council granted permission for the extended operating hours of 07:00 to 19:00 on any day of the week. These operational hours are imposed through condition 3 of permission reference 21/00379/FUL. The appellant objects to the condition as she considers that there is no justification for restricting the operating hours to 19:00.
6. The reason given for condition 3 is in the interests of the amenity of the surrounding area and to prevent anti-social behaviour at night-time in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31). In addition, the Council's appeal statement indicates that the condition is necessary to minimise disruption to wildlife in the adjacent woodland, with additional noise, light pollution and litter also referenced.
7. Taking the above background into account, the main issue is whether the condition is reasonable and necessary in terms of the effect of the operational hours on the character and appearance of the area, the living conditions of nearby residents with particular regard to noise and disturbance, and wildlife.

Reasons

8. From the submitted evidence and what I observed, the rest stop café has been constructed and is operational.
9. Noise and disturbance can arise from such uses due to customers congregating outside at the premises, vehicle engines revving and the closing of vehicle doors. Although there are residential properties in the wider area they are not in close proximity to the site. The separation distance is such that additional noise that may arise during the proposed extended operational period would not cause unacceptable harm to the living conditions of residents. Although there are open fields around the site, it is adjacent to the A6 road with associated traffic noise. Furthermore, the nature and scale of the use is such that any noise that may arise during its operation to 22:00 would not materially harm the character of the area or have a detrimental effect on wildlife in the adjacent woodland.
10. During my site visit on a weekday afternoon, which I appreciate was just a snapshot in time, I observed that the site and the immediate vicinity was in a relatively tidy state, with rubbish bins in place and no obvious signs of litter. There is no persuasive evidence before me that this would not remain the case with the proposed extended operational hours.

¹ Full description is "Permanent siting of a shipping container to be used as a rest stop cafe (resubmission of planning application 18/00339/FUL)"

11. While I note the concerns expressed on the application about anti-social behaviour, these comments were not substantiated by any clear evidence supporting a link between the rest stop cafe and the issues described. Furthermore, there is no evidence before me relating to occurrences of anti-social behaviour at the site, or that clearly establishes that operating hours beyond 19:00 would attract young people with a resultant likely increase in anti-social behaviour.
12. A condition was included on permission reference 21/00379/FUL to control the installation of any external lighting. This would adequately mitigate potential harm to wildlife in the adjacent woodland during the proposed extended period of operation. This condition would also reduce the potential for light pollution to harm the character and appearance of the area during this extended operational period. There is a sufficient separation distance from any dwellings such that lighting would not harm the living conditions of residents.
13. There is an absence of any persuasive evidence to link the extended hours of operation with the types of alleged issues or harm stated. In addition, according to the Council's officer report, there were no objections to the proposed extended operating hours received from the Council's environmental health service. There is therefore an insufficient basis to conclude that the operation of the rest stop café up to 22:00 would give rise to harmful effects on the character and appearance of the area and living conditions of residents including from social issues, or on wildlife.
14. A reason given by the appellant for the extended opening hours was to allow for additional customers to take account of a reduced passing trade during COVID restrictions. While such restrictions are no longer in place, for the reasons stated, the extended hours of operation would not cause unacceptable harm and so I give the fact that COVID restrictions no longer apply only very limited weight.
15. In conclusion, the development with the proposed extended operating hours would not harm the character and appearance of the area, the living conditions of nearby residents with regard to noise and disturbance or wildlife. However, a varied condition is still necessary restricting operating hours to between 07:00 to 22:00 on any day of the week in order to maintain a relatively peaceful and tranquil character to the wider area during night-time and early morning periods and when residents in the locality are likely to be asleep. Subject to this varied condition, the proposal would comply with the environmental protection, residential amenity, safety and biodiversity requirements of Policies CDMP1, CDMP3 and CDMP4 of the adopted 2019 Wyre Local Plan (2011-31).

Conclusion

16. For the reasons outlined above, a clearly justified case has not been made as to why the operating hours should be restricted to 19:00. Consequently, I conclude that the appeal should be allowed and that the planning permission is varied by amending the operating hours to 22:00.

F Wilkinson

INSPECTOR