



**PLANNING COMMITTEE:  
18<sup>th</sup> January 2024**

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**Report of:** Corporate Director of Transformation, Housing and Resources

**Contact for further information:**

**Case Officer:** Rachel Lightfoot (E-mail:Rachel.lightfoot@westlancs.gov.uk)

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**PLANNING APPLICATION REF: 2022/0626/FUL**

**PROPOSAL:** Retrospective change of use from café to function room

**APPLICANT:** David A Lee and Sons Ltd

**ADDRESS:** The Aviary Restaurant, Blindmans Lane, Ormskirk, L39 3AD

**REASON FOR CALL IN:** Application has been called in by Cllr Dowling to consider the impact on residential properties

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**Wards affected: Ormskirk West**

## **1.0 PURPOSE OF THE REPORT**

- 1.1 To advise Planning Committee on an application which seeks to retain the function room which has been in use since 2020 following the cessation of the café use in this space.
- 1.2 It is considered that subject to planning conditions, the retention of the use is acceptable in terms of design, access and amenity. There are no alterations to the external appearance of the building. The development is considered to be compliant with the NPPF and Local Plan in respect of amenity, impact on the Green Belt and other relevant matters.
- 1.3 The application was deferred on 23 November 2023 at the request of Planning Committee for a parking management plan.

## **2.0 RECOMMENDATION TO PLANNING COMMITTEE**

## 2.1 That planning permission be **GRANTED** subject to conditions

### 3.0 **THE SITE**

- 3.1 The application site is located on the west side of Blindman's Lane and is a single storey building with planning permission to be used as a restaurant/café. More recently it has been acting as a function venue for weddings and other functions.
- 3.2 The site was a former agricultural barn, granted planning permission in 2020 to be used partially as a function room.

### 4.0 **PROPOSAL**

- 4.1 The application is for the retention of the change of use of part of the building from café to function space. There are no external alterations proposed to the building.
- 4.2 The building has partial consent for use as a function room under planning reference 2019/0913/FUL. It is understood that the use has been operational since 2020.
- 4.3 Additional information in relation to noise management has been received since the receipt of the planning application.

### 5.0 **PREVIOUS RELEVANT DECISIONS**

- 5.1 2019/0913/FUL – Change of use of former butchers to function room including entrance shelter and additional extensions (retrospective) and extension to function room – APPROVED 14 May 2020

2022/0624/FUL – Retrospective permission for water fountain, wedding gazebo and fence – APPROVED 23 November 2023

2015/0062/COU – Change of use of existing agricultural barn to A3 use (café). Various external fabric alterations including new windows, door openings and timber overcladding – APPROVED 20 April 2015

- 5.2 In respect of the building adjacent to the site:

2018/575/COU – Change of use from agricultural building to beauty salon – APPROVED 4 September 2018.

### 6.0 **OBSERVATION OF CONSULTEES**

- 6.1 LCC Highways (08.08.2022) – no objection consider will have a negligible impact on highway safety and capacity.

6.2 Environmental Protection (26.10.2023) – no objection subject to conditions which are reflected in the proposed decision

## 7.0 **OTHER REPRESENTATIONS**

A representation has been received that raises the following concerns:

- The material change of use (and associated site intensification) has not been addressed
- The officer's reports contain fundamental errors and omissions
- The officer has conflated the planning and licensing regimes
- The officer has not properly addressed the proposed greenbelt Encroachment
- The officer has not addressed the issue of "planning creep" where, over the course of the eight years, the site has expanded and the conditions progressively "diluted".
- The report is inconsistent with other decisions (including decisions on the same site)
- The officer has not addressed previous breaches of planning conditions/enforcement action (similarly other departments within WLBC have also found the applicant to be in breach of licensing conditions and building regulations in relation to this site. The site has also been subject to ongoing noise complaints). On the subject of noise/licensing/planning complaints - no complaints were received by WLBC when the premises operated as a cafe - the complaints only began once the premises reopened as a wedding / "function" venue.
- Report fails to acknowledge that the 2020 permission was ancillary to the restaurant A3 usage and was subject to various EP conditions.
- The proposed "function space" and associated intensification has not been addressed (but the effects of which can be read in the EP report on the Ring o Bells application (refused by this committee))
- The building has been operational in it's current form since June 2021. The evening hours have been quite sparse, usually opening at the weekend during summer months and then closed in the evenings for most of the summer. The building has seldom being used on weekday evenings at any time of year, so the proposed opening times are at odds with the current usage pattern.
- No mention of sound limit of the limiter nor it's function (ie to protect against public nuisance in a licensing context)
- The "detrimental impact" is in relation to public nuisance/licensing not in residential amenity/planning. The limit was set in the context of licensing not planning.
- The same mistake is repeated yet again - there is no other regime to protect residential amenity other than the planning regime. The reason why there are "active complaints" is because EP failed to respond to the complaint and closed it without consulting the complainant.
- The (deferred) report is completely at odds with the conditions/rationale in previous decisions on the same site. It appears that the case officer is putting far too much reliance on the noise limiter (which has been installed at the request of WLBC licensing and fulfils a licensing function).

- The proposed use will have an enormous impact - from a small cafe to a large 200 capacity "party venue". This was addressed by WLBC EP in Ring o Bells. Crucially the case officer in their conclusion does not use the phrase "residential amenity", instead using the phrase "demonstrable harm" - which is quite frankly bizarre as "demonstrable harm" specifically relates to planning enforcement
- The proposed conditions are weak, inconsistent with previous applications, ambiguous, ineffective and difficult to enforce.

## **8.0 SUPPORTING INFORMATION**

8.1 Plans

8.2 Information in relation to noise management.

8.3 Parking Management Plan. This was received 15<sup>th</sup> December 2023 and details the venue operates using a Car Park Manager when events are held who checks for vehicles which are not properly parking or not authorised to park to enable steps to be taken for these vehicles to be moved.

8.4 There is a main car park immediately to the front of the venue and an overspill car park on land owned by the applicants to the north east of the venue.

8.5 Staff and supplier car parking is available to the side of the venue to allow maximum car parking for customers.

## **9.0 RELEVANT PLANNING POLICIES**

9.1 The National Planning Policy Framework (NPPF) and the West Lancashire Local Plan 2012-2027 provide the policy framework against which the development proposals will be assessed. The site is located within the Green Belt as designated in the West Lancashire Local Plan 2012-2027.

### **West Lancashire Local Plan 2012-2027**

GN1 – Settlement Boundaries

GN3 – Criteria for Sustainable Development

EC2 – The Rural Economy

IF2 – Enhancing Sustainable Transport Choice

Supplementary Planning Documents

Development in the Green Belt (2015)

Design Guide (2008)

## **10.0 OBSERVATIONS OF CORPORATE DIRECTOR OF TRANSFORMATION, HOUSING AND RESOURCES**

10.1 The main considerations for this application are:

1. The principle/impact on the Green Belt
2. Design and Visual Appearance
3. Residential Amenity

#### Principle of Development/Impact on the Green Belt

- 10.2 The West Lancashire Local Plan policy GN1, states that development proposals within the Green Belt will be assessed against national policy and relevant local plan policies.
- 10.3 Paragraph 137 of the NPPF states that the Government attaches great importance to Green Belts. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 10.4 Paragraph 150 notes that certain other forms of development are also not inappropriate within the Green Belt providing they preserve its openness and do not conflict with the purpose of including land in it. This includes '*the re-use of buildings that are of permanent and substantial construction.*'
- 10.5 The building was granted permission to change its use from agricultural to a café/restaurant under reference 2015/0062/COU and thereafter a partial change of use to a function space under 2019/0913/COU. The reuse of the building is therefore appropriate within the Green Belt and is acceptable in principle.
- 10.7 It is considered the proposal would comply with the requirements of Policy GN1 of the West Lancashire Local Plan 2023-2027 and paragraph 149 of the NPPF.

#### Design and Visual Appearance

- 10.8 Policy GN3 of the West Lancashire Local Plan together with the Design Guide SPD is relevant to the assessment of the design and external appearance of the development and requires that development should be of a scale, mass and built form which responds to the characteristics of the site and its surroundings.
- 10.9 There are no alterations to the external appearance of the building and it is considered to remain appropriate within its surroundings.
- 10.10 It is considered that the proposal is in accordance with Policy GN3 of the West Lancashire Local Plan and the Council's Design SPD.

#### Residential Amenity

- 10.11 There are a number of residential dwellings within the vicinity. The application for the change of use of the barn in 2019 under reference 2019/0913/FUL was granted subject to a number of conditions including noise limiter installation. Following the receipt of the planning application, further information was sought in relation to the provision of a noise management plan.
- 10.12 Environmental Protection have been consulted on the application and have responded following the receipt of the final noise management plan noting that the premises is already fitted with a noise limiting device which regulates the music output from the premises.
- 10.13 Environmental Health have worked with the premises proactively to set the noise limiter to a level which will ensure there is no detrimental impact on neighbouring residential premises when an event is being held. In addition, a noise management plan has been prepared which outlines processes in place to control activity. Subject to conditions Environmental Health has no objections to the proposal.
- 10.14 Paragraph 187 of the NPPF states 'Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.' Paragraph 188 states 'The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning should assume that these regimes will operate effectively.' In this case, the noise issues are controlled via the licencing regime and therefore should be assumed to be working correctly. Environmental Protection have confirmed that there are no active complaints against the property in respect of noise.
- 10.15 It is considered that the imposition of a conditions regarding operational hours, adherence noise management plan and the continued use of the limiter the development will maintain levels of residential amenity and the retention of the extended function room use will comply with the requirements of Policy GN3 of the West Lancashire Local Plan 2012-2027.

#### Car Parking

- 10.16 A request for a car parking management plan was made by Planning Committee and has since been provided by the applicant. The plan details a range of measures including:
- Customers made aware prior to booking the amount of parking spaces available at the venue
  - A car park manager has been appointed to direct customers to their spaces
  - Checks are made for vehicles parking inappropriately and liable to cause obstruction
  - Checks are made for vehicles which have not been authorised to park
  - Staff and suppliers park to the side of the venue to maximise spaces for customers.

- 10.17 The car parking to the front of the venue has been identified as well as an area of overflow car parking on land to the opposite site of the access lane. This land is also in the ownership of the applicant and behind buildings which are in the ownership of the applicant also.
- 10.18 There are no objections from the Highway Authority to the application, a condition has been added to ensure that the Car Park Management Plan is adhered to.
- 10.19 It is considered that the application is acceptable in relation to car parking.

#### Response to representations

- 10.20 The requirement for a noise limiter was not conditioned as part of the previous permissions, however the device was installed following a recommendation by the Council upon receipt of noise complaints. The device remains on site and forms part of the noise mitigation plan (conditioned) as retained equipment which should be maintained at the approved setting when amplified music or equipment is used. Environmental Health are satisfied with the noise mitigation plan provided and that the device remains in-situ in association with the use of the site.
- 10.21 Environmental Health also confirmed at the time of writing their consultation response(s) that there has been no new nuisance complaints relating to noise at the above site in the last 12 months. As such, subject to the implementation of the noise mitigation plan, officers are satisfied that noise disturbance will not result and therefore living conditions of neighbouring properties is safeguarded.
- 10.22 Condition 4 is correctly presented - no amplified speech (anyone using a microphone) or any electronic equipment (i.e using an amplifier) shall go through the limiter.

### **11.0 CONCLUSION**

- 11.1 The retention of the function room use will have a limited impact on the overall use of the building. There are no objections from Environmental Protection.
- 11.2 It is considered that subject to the imposition of conditions relating to the operational hours and noise, the application would not cause demonstrable harm.
- 11.3 The application is considered to be in accordance with the relevant policies of the NPPF and the West Lancashire Local Plan 2012-2027.

### **12.0 RECOMMENDATION**

- 12.1 That planning permission be GRANTED subject to the following conditions:

1. The development hereby approved shall be carried out in accordance with details shown on the following plans:

Proposed GA Plan received by the Local Planning Authority on 31st May 2022

Site Location Plan dwg no. LO4 received by the Local Planning Authority on 13th July 2022

Reason: For the avoidance of doubt and to ensure compliance with the provisions of Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

2. The premises shall not be open to the public between the hours of 01.00 and 11.00 Monday to Sunday and Public Holidays, without the prior written approval of the Local Planning Authority.

Reason: In order to maintain appropriate levels of residential amenity in accordance with Policy GN3 of the West Lancashire Local Plan 2012-2027.

3. The premises shall operate in full accordance with the controls and measures outlined in the approved noise management plan received 26<sup>th</sup> October 2023 at all times.

Reason: In order to maintain appropriate levels of residential amenity in accordance with Policy GN3 of the West Lancashire Local Plan 2012-2027.

4. All amplified sound and speech the premises shall be routed through the electronic noise limiting device at all times when the premises is operational.

Reason: In order to maintain appropriate levels of residential amenity in accordance with Policy GN3 of the West Lancashire Local Plan 2012-2027.

5. Notwithstanding the provisions of the Noise Management Plan dated 26 October 2023, all doors and windows shall be closed outside the hours of 0800-2200 except in the event of an emergency.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

6. Notwithstanding the provisions of the Noise Management Plan dated 26 October 2023, the outdoor seating area to the premises shall only be available for use between the hours of 1000 to 2200 and shall be removed or otherwise secured to prevent use outside of the permitted hours.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.



7. No loading/unloading of vehicles and no deliveries shall be taken at or dispatched from the site, outside the hours of 0800 to 2000, nor at any time on Sundays, Bank or Public Holidays.

Reason: To safeguard the amenities of nearby residents and to comply with Policy GN3 in the adopted West Lancashire Local Plan 2012-2027 Development Plan Document.

8. The Car Park Management Plan shall be adhered to at all times whilst the use is in operation.

Reason: In order to maintain appropriate levels of residential amenity in accordance with Policy GN3 of the West Lancashire Local Plan 2012-2027.

### **13.0 SUSTAINABILITY IMPLICATIONS**

- 13.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

### **14.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 14.1 There are no significant financial or resource implications arising from this report.

### **15.0 RISK ASSESSMENT**

- 15.1 The actions referred to in this report are covered by the scheme of delegation to officers and any necessary changes have been made in the relevant risk registers.

### **16.0 HEALTH AND WELLBEING IMPLICATIONS**

- 16.1 There are no health and wellbeing implications arising from this report.

### **Background Documents**

In accordance with Section 100D of the Local Government Act 1972 the background papers used in the compilation of reports relating to planning applications are listed within the text of each report and are available for inspection in the Planning Division, except for such documents as contain exempt or confidential information defined in Schedule 12A of the Act.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, no Equality Impact Assessment is required.

### **Human Rights**

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from Article 8 (the right to respect for private and family life, home and correspondence) and Article 1 of Protocol 1 (the right of peaceful enjoyment of possessions and protection of property).

### **Appendices**

None.