

20 November 2024

APPELLANT STATEMENT FOR THE PLANNING APPEAL

Proposal: Regularisation of unauthorised change of use to bar and music venue.

Location: Salvage House Unit 5b Abbey Works King Street Whalley BB7 9SP

This statement has been prepared for the appeal to formally contest the enforcement order issued on 22nd October 2024. It has been issued in line with paragraph 7 from within the order.

The appeal is issued under Ground (g) – that the time given to comply with the notice is too short. This is substantiated by the separate planning appeal under section 78 of the TCPA submitted to the Inspectorate on 19 November 2024 (ref APP/T2350/W/24/3355795).

The appellant considers that having exercised his right to appeal under section 78 of the TCPA that it would have been fair and reasonable for the authority to have allowed an appropriate period of time for the decision under section 78 of the appeal to be issued rather than to have to comply immediately with the requirement of the enforcement notice. The appellant would expect both the appeals to be dealt with concurrently.

It has been written (for clarity) highlighting the reasons why the appellant is disputing the two reasons for refusal as detailed in the planning decision notice dated 17 October 2024 (ref 3/2024/0667). This provides important information in order to set out the appellant's case.

The planning application was originally submitted in August 2024 following advice received from the Head of Planning to submit a planning application to 'regularise' the current use. An email confirming the correct course of action for the appellant to follow was issued by RVBC on June 5th 2024 stating :-

'We don't think that any of the previous uses including antique shop and taxi office ever had permission, and so unless they were in situ for 10years+ they were not a lawful use, as such it wouldn't be right to apply for a change of use from Class E if this was never lawful.

I think the safest bet it to apply to regularise the current use without referring to a previous use, and so a suggested description would be along the lines of "Regularisation of use of building for bar and restaurant (Sui Generis)"

As for supporting documentation you would need a noise assessment and heritage statement. Whilst not a validation requirement I would also encourage a Business Operation Statement'.

The application was therefore submitted with a site plan, an existing floor plan, an independent noise assessment, and a design and access statement including a heritage appraisal.

Reasons for refusal

1. The resultant activity from the proposed use, both internally and externally, from the playing of music and from customers inside and leaving the premises, would increase noise disturbance in the area causing unacceptable harm to the living conditions of the neighbouring receptors in the vicinity. This is contrary to Policy DMG1 of the Ribble Valley Core Strategy and Paragraph 191 of the National Planning Policy Framework.

2. The proposed use would result in increased pedestrian access to and from the site in an area where there are no footways and street lighting, with vehicles manoeuvring in a confined area, which would be of significant detriment to highway safety. Moreover, the proposed use lacks the required parking provision, and there are insufficient details relating to deliveries and servicing. This is contrary to Policies DMG1 and DMG3 of the Ribble Valley Core Strategy and Paragraphs 116 and 191 of the National Planning Policy Framework.

Appellant remarks

We have analysed the case officer's decision and the statements in the delegated report to support the two reasons for refusal and we address the key issues directly as follows :-

Reason 1

With regards the issue of noise nuisance

The Noise consultant's report clearly identified that the noise levels from the building would not breach the recommended sound levels at the nearest sensitive properties. It also touched on the other activities in the area. Noise from the adjacent gym etc.

This reason for refusal comments on resultant activities, both internal and external would increase noise disturbance in the area causing unacceptable harm. There is no evidence submitted to suggest this is the case and no comments from the councils Env. Health team. Neighbours have written in to object, stating that they are frequently impacted by noise from the site – it appears complaints have only been made since the application was lodged. Env. Health have apparently been out and measured levels above those permitted (whatever that means), however there is no objection from Env. Health – what where these levels has the site been told they are being monitored as per the councils obligations?

Given the above and the “on-going” issues why has no enforcement been undertaken by either licensing (the council are aware of the site), Planning (who would have been made aware of the use of the site through licensing) or Env health who have apparently been out monitoring and identified sound levels from the site above those “permitting”.

The Parish Council comments look very similar to those in the case officer's report if not identical. Even to the last paragraphs including the phrase “The Council strongly urge the Planning Authority to reject this planning application.”. This is extremely concerning. There is no evidence of noise or anti-social behaviour issues anywhere in the application other than from neighbours. No reports from the police, licensing or env. Health.

The officers report also bullet points on representations these include the following:

- Licensing will have information on excessive noise levels, overrunning music shut off times, emptying of bottles into bins late and into the early hours, shouting and general anti-social behaviour from people outside the venue;

- RVBC Environmental Health have taken sound recordings and found that noise levels exceed the permitted levels as well as music being played outside of permitted hours as per the Temporary Event Notice requirements;

Suggesting that these are facts but again no formal comment or corroboration from these departments.

The impact on the residents is questionable and given the suggestions we would have expected to see a comment from Env. Health as they have apparently witnessed the problems.

In respect to the section on “Impact Upon Residential Amenity”, the Council stated that properties to the east were 36 & 45m away, We question this distance. as it appears that they have measured from the front façade of the building and not just the bar section. Later comments officer’s report question the distances. The noise report did state that it did not include Corn Mill Mews. Parap3.10 (not the stated 3.8) does identify Corn Mill Mews as the closest.

The case officer states that Env. Health have made various measurements and determined the noise from the site is both detrimental to the environment and a nuisance. As such they have a legal duty to serve an abatement notice which they haven’t.

Reason 2

With regards the issue pedestrian access, parking, deliveries etc

The premises are located in a well established area of mixed business use and the council have allowed these uses over several years. There have never been any issues with the pedestrian access to the appellant’s building or other buildings in the immediate vicinity. It is not a main thoroughfare for vehicles and servicing is organised during the day time without any difficulties or highway safety issues