

Proposed development: Variation of Condition No.6 "opening hours" pursuant to planning application 10/22/0758 "Proposed change of use of lower ground floor from vacant mill to a Live Music Venue (Sui Generis use) and removal of a section of link building. " - to amend opening hours to: Monday to Thursday open from 18:30 - 23:00, Friday open from 17:00 - 23:00; Saturday open from 16:00 until 23:00, and Sunday/Bank Holidays open 16:00 until 22:00.

**Site Address:
BVSMNT (former Darwen Windows Ltd)
The Old Co-Op Building
Borough Road
Darwen
BB3 2FT**

Applicant: Mr Grant Mizon

Ward: Darwen West

**Councillors: Dave Smith, Brian Taylor
Stephanie Brookfield**



1.0 SUMMARY OF RECOMMENDATION

1.1 APPROVE – subject to conditions (including that varied) set out at paragraph 4.1.

2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE

2.1 This application is reported to Committee as it represents a minor material amendment to an application originally determined at Committee level, due to the volume of public objection received. Determination is in accordance with the Council's adopted Scheme of Delegation.

2.2 The original grant of planning permission is subject to conditions. In the context of noise control, these include a 12 month temporary permission; limited opening hours; maximum noise levels at the boundary of noise sensitive premises; and provision of a sound proofing scheme, in the interests of safeguarding amenity levels for the surrounding area.

2.3 The application is submitted under the provision of Section 73 of the Town and Country Planning Act 1990 (as amended). The proposal seeks to vary condition no. 6, as summarily referenced in the above development description, applied to the host planning permission 10/22/0758 dated 15th December 2022.

2.4 Members are advised that all other conditions would remain unchanged and applicable to a varied permission. Critically, the 12 month temporary permission would allow the Council to monitor the impact of the development.

2.5 The amendment represents a modest increase in opening hours to those originally approved, in order to capture early evening trade at the weekend and Bank Holidays. On balance, the proposal is found to be acceptable, in accordance with the Development Plan and National Planning Policy Framework.

3.0 RATIONALE

3.1 Site and Surroundings

3.1.1 The application site (the site) comprises the basement of a vacant red brick mill, last occupied by Darwen Windows, located and accessed to the south east of Borough Road, Darwen.

3.1.2 The mill was constructed in circa 1901 as an industrial bakery and was later sub-divided into separate units, which have been occupied by a range of commercial uses.

3.1.3 The following images show the building, its location and the internal space (Planning, Design and Access Statement, Antonio Caparelli).



3.1.4 The site is located within the Darwen Town Centre Conservation Area (CA), on the fringe of the Town Centre, just outside of its boundary, so defined by the Adopted Polices Map for Darwen.

3.1.5 The local area is defined as mixed, with a range of commercial and service uses in immediate proximity to the site, to the north, south and east. To the west, the area transitions away from a typical town centre / edge of centre mix to residential uses.

3.2 Proposed Development

3.2.1 This application is submitted under the provisions of Section 73 of Town and Country Planning Act 1990, as a minor material amendment to the original grant of (reserved matters) planning permission. The amendment seeks to vary the following condition – no. 6 on the original permission:

6. The operational use hereby permitted shall only take place between the following hours:

*Monday - Saturday: 18:30 - 23:00; and
Sunday: 18:30 - 22:00.*

REASON: In order to protect the amenities of the area by, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

3.2.2 The varied condition would read as follows:

5. The operational use hereby permitted shall only take place between the following hours:

*Monday to Thursday: 18:30 - 23:00;
Friday: 17:00 - 23:00;
Saturday: 16:00 - 23:00; and
Sunday & Bank Holidays: 16:00 - 22:00.*

REASON: In order to protect the amenities of the area by, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

3.2.3 The revised list of conditions is set out at paragraph 4.1. The varied condition is listed as no. 5, due to the original decision notice duplicating condition no. 3 at condition no. 4. A revised decision notice would correct this error.

3.3 Development Plan

3.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise.

3.3.2 The Development Plan comprises the Core Strategy and adopted Local Plan Part 2 – Site Allocations and Development Management Policies. In determining the current proposal the following are considered to be the most relevant policies:

3.3.3 Core Strategy

- CS1 – A Targeted Growth Strategy

3.3.4 Local Plan Part 2 (LLP2)

- Policy 7 – Sustainable and Viable Development
- Policy 8 – Development and People
- Policy 10 – Accessibility and Transport

3.4 Other Material Planning Considerations

3.4.1 Local Plan Review

Blackburn with Darwen Borough Council is reviewing their current adopted Local Plan. The review will lead to a new Local Plan to replace the existing and will cover the period 2018 to 2037. As an emerging document, it carries weight in the decision making process.

3.4.2 National Planning Policy Framework (The Framework) (2021)

Areas of The Framework especially relevant to the proposal are as follows:

- Section 6: Building a Strong and Competitive Economy
- Section 11: Making Effective Use of Land

3.4.3 National Planning Policy Guidance (NPPG).

3.5 Assessment

3.5.1 Assessment of this application is limited to the merits of the extended opening hours. The principle of the development is established under the original grant of planning permission. The following important materials considerations are taken into account:

- Development and People / Amenity; and
- Accessibility and Transport.

3.5.2 Amenity

Policy 8 requires a satisfactory level of amenity and safety is secured for surrounding uses and for occupants or users of the development itself; with reference to noise, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings.

- 3.5.3 The potential for noise disturbance arising from the live music venue use was a key consideration of the original planning application, in consultation with the council's Public Protection consultee, aided by review of a submitted Noise Impact Assessment. Significant public objection was received, consistently citing noise nuisance as a concern. Committee offered support for the application, in line with the recommendation of Public Protection – ie conditions limiting the use to a temporary period of 12 months; limited hours of use; maximum noise levels at the boundary of noise sensitive premises; and sound proofing to the host building.
- 3.5.4 In response to the subject application, Public Protection offer support, whilst acknowledging the potential for noise disturbance and the general level of uncertainty as to how profound this will be. Their support is in recognition of the relatively modest increase in opening hours, amounting *to an hour and a half earlier on a Friday; and two and a half hours earlier on a Saturday, Sunday and Bank Holidays*. Critically, the proposed hours would not result in the venue closing any later than originally approved. Moreover, all other noise control conditions originally applied would also be applied to the grant of an amended permission. The 12 month temporary period of consent would allow noise impacts to be pro-actively monitored, affording the Council an appropriately representative position on which to base assessment of any subsequent application proposing a permanent use. It should also be emphasised that it would be open to the Local Planning Authority to take enforcement action against any established breach of condition throughout the duration of the temporary use.
- 3.5.5 Supporting the extended opening hours would allow the venue to capture early evening weekend trade, thereby providing an alternative town centre fringe offer.
- 3.5.6 Accordingly, on balance, and subject to the aforementioned limiting / mitigating conditions, it is found that the proposal would make an overall positive contribution to the area, and would secure a satisfactory level of amenity for surrounding uses, in accordance with the requirements of Policy 8 and The Framework.
- 3.5.7 Accessibility and Transportation
Policy 10 requires that road safety and the safe and efficient and convenient movement of all highway users is not prejudiced and that appropriate provision is made for off street servicing and parking in accordance with the Council's adopted standards.
- 3.5.8 An objection received cites parking as a concern. No increased parking demand or general highway impacts would arise from the proposed amended opening hours, considered in the context of the sites sustainable town centre fringe location and availability of on-street and off-street parking in the immediate vicinity of the site.

3.5.9 Accordingly, highway impacts arising from the development are found to be acceptable, in accordance with the requirements of Policy 10 and The Framework.

3.5.10 Summary

This report assesses the material issues affecting this planning application. The assessment demonstrates that the planning decision must be made in the context of assessing the merits of the proposal balanced against any potential harm that may arise from its implementation. This report finds that the proposal, on balance, meets the policy requirements of the Blackburn with Darwen Core Strategy, Local Plan Part 2, and the National Planning Policy Framework

4.0 RECOMMENDATION

4.1 Approve subject to:

Delegated authority is given to the Strategic Director of Growth and Development and the Deputy Chief Executive to approve planning permission, subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of the host planning permission – ie. 15/12/2022.

REASON: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposal received 13th October 2023, including drawing number TWNTS.01.

REASON: For the avoidance of doubt and to clarify which plans are relevant to the consent

3. The applicant or any successor in title shall notify the Local Planning Authority in writing and in advance, of the date on which the operational use hereby approved shall first commence. The approved use shall thereafter be limited to a temporary period, ceasing no later than 12 months after the specified date of commencement.

REASON: In order that amenity impacts arising from the development can be assessed during this period, and that any future application can be decided on the basis of this assessment, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

4. No development shall take place until a sound proofing scheme to the application building, to guard against the transmission of noise and vibration, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a requirement for approval of

performance testing. The development hereby permitted shall thereafter be implemented and operated in strict accordance with the approved details.

REASON: In order to protect the amenities of the area by ensuring that measures are implemented to prevent noise nuisance, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

5. The operational use hereby permitted shall only take place between the following hours:

Monday to Thursday: 18:30 - 23:00;
Friday: 17:00 - 23:00;
Saturday: 16:00 - 23:00: and
Sunday & Bank Holidays: 16:00 - 22:00.

REASON: In order to protect the amenities of the area by, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

6. The level of noise (LAFeq(1 min), free field) emitted from the site shall not exceed 2dB, 8dB and 13dB in the 63Hz, 125Hz and 250Hz octave bands respectively at the boundary of any residential property.

REASON: In order to protect residential amenity by ensuring that measures are implemented to prevent noise nuisance, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

7. Should contamination be encountered unexpectedly during redevelopment, all works should cease, and the LPA should be immediately informed in writing. If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be presented, and agreed in writing by the LPA. No deviation shall be made from this scheme without the written express agreement of the LPA.

REASON: To protect the health of future occupiers of the site, in accordance with Policy 8 of the adopted Blackburn with Darwen Borough Council Local Plan Part 2.

5.0 PLANNING HISTORY

5.1 10/22/0758: Proposed change of use of lower ground floor from vacant mill to a Live Music Venue (Sui Generis use) and removal of a section of link building. Approved by Planning & Highways Committee 15/12/2022.

6.0 CONSULTATIONS

6.1 Public Protection

With reference to the above application, I recommend that the following condition(s), informative(s) and/or comment(s) be included if planning permission is granted:

Comment: Noise Amenity

This live entertainment venue proposal presents some serious concerns in respect of its impact upon surrounding land users that may be affected by excessive noise disturbance. There is uncertainty regarding the noise level of the proposed entertainment. Noise management at the venue will be important; the restricted hours of use and temporary period of approval will enable any noise complaints to be investigated and enforcement of planning conditions as appropriate. This would inform the assessment of any proposed extended hours of use into the night-time period.

Condition – Temporary Approval

The applicant or any successor in title shall notify the Local Planning Authority in writing, and in advance, of the date on which the operational use hereby approved shall first commence. The approved use shall thereafter be limited to a temporary period, ceasing no later than 12 months after the specified date of commencement.

Reason: In order that amenity impacts arising from the development can be assessed during this period, and that any future application can be decided on the basis of this assessment, in accordance with Policy 8 of the Blackburn with Darwen Borough Local Plan Part 2.

Condition – Entertainment Noise Control

Entertainment noise (LAFeq(1 min), free field) arising from the application site shall not exceed 2dB, 8dB and 13dB in the 63Hz, 125Hz and 250Hz octave bands respectively at the boundary of any noise sensitive premises.

Reason: To prevent loss of noise amenity at noise sensitive premises.

Condition – Sound Proofing and Validation

A sound proofing scheme shall be submitted to the Local Planning Authority (LPA) in writing and implemented at the application premises. The sound proofed premises shall be performance tested and approved, in writing, by the LPA prior to commencement of the approved use. All sound proofing measures shall be retained for the duration of this use.

Reason: To prevent loss of noise amenity at noise sensitive premises.

Informative: The developer should have regard to BS 8233: 'Sound Insulation & noise reduction for buildings – Code of Practice', in order to minimise the transmission of noise from the premises.

Condition – Hours of Use Restriction

The approved use shall be restricted to the following times:

Monday to Thursday: 18:30 – 23:00 hours

Friday: 17:00 – 23:00 hours

Saturday: 16:00 – 23:00 hours

Sunday: 16:00 – 22:00 hours

Any variation of the above hours restriction must be approved in writing by the Planning Authority.

Reason

To ensure appropriate hours of use to minimise noise disturbance at noise sensitive premises.

Other Informative(s);

Informative: Statutory Nuisance Loss of Amenity

The Applicant should be aware that this planning approval does not prejudice any investigation or formal proceedings deemed appropriate by the Council under the Environmental Protection Act 1990 for statutory nuisance.

7.0 CONTACT OFFICER: Nick Blackledge – [Principal Planning Officer].

8.0 DATE PREPARED: 29th November 2023.

9.0 SUMMARY OF REPRESENTATIONS

Objection – Mrs M A Bedworth, no address provided. Received: 20/10/2023

Dear Martin

Following on from your recent letter and previous regarding the above planning for BVSMNT The Old CO-OP Building, Borough Road, Darwen BB32FT.

Will it actually make any difference if anyone who lives near this says anything?! You have obviously just ignored previous grievances regarding this including noise levels 7 days a week. May I also point out there is INSUFFICIENT PARKING!!! It is bad enough as it is for residents in this area without adding this ridiculous idea to it all. Where are you proposing visitors to this unnecessary venue park? I don't want to come home after a long day at work and be unable to park and kept awake until past 11pm every night when we have to be up for work at 5.30am.

There are so many empty venues within town that are suitable for this and not so close to residential areas. It is quite clear you live nowhere near this area as you won't be disturbed by it or the insufficient parking.

This idea is completely unacceptable and I'm sure if you actually made the effort to knock on people's doors in this area instead of just giving us an option of emailing and probably just ignoring these anyway they would all say no thank you! Some of our elderly residents may not have access to email or understand.

Yours sincerely and with disgust

2nd Objection – Mrs M A Bedworth, BB3 1LQ. Received: 24/10/2023

I am writing to you regarding our local council and the above planning reference. I have also attached the letter this concerns.

I would like to know why this has even been considered by the council in a residential area with absolutely no parking facilities and also 7 days a week!! Have the residents on Reservoir Street, Tockholes Road and Borough Road been consulted properly on this, no they haven't. It's just a case of this is going ahead whether you like it or not. Not only is this 7 days a week with NO parking facilities, there is the noise when people are leaving here at 11pm!

In the small town of Darwen we already have many facilities that provide services for live music, DJs and other entertainment.

For instance we have to name but a few:

Sunbird

Level One

Level Live

Bees Knees

Bridgewater

Blues Bar

The Old Function Room

The Old Crown

The Vault

Spitfire

I am writing to you to ask for your help in this matter and hope you can shed some light on why this is being allowed to go ahead so close to many people's homes who work and do not want to be kept awake all week, every night.

There are better places this money could be spent on as the town is full of pound shops, barbers and takeaway places as it is along with all the bars that leave the town a mess after people have been out with rubbish and glasses dumped everywhere in the streets.

We have no banks anymore, there is nowhere to buy shoes or clothing. At the end of the day this is supposedly a town but unless you want rubbish from a pound shop or a takeaway there's not much to offer in our lovely town anymore.

I have written to the planning committee previously regarding Ref 10/23/0896 BVSMNT The Old Coop Building, Borough Road, Darwen, BB2 2FT and now also Mr Berry.

