



Planning Appeals Update

Planning Committee

Report of Head of Planning and Infrastructure

DATE OF COMMITTEE

March 2019

PLANNING APPEALS

WRITTEN REPRESENTATION

PA/341548/18	115-117 Yorkshire Street, Oldham, OL1 3SY
PA/341698/18	Nimble Nook Service Station, Chadderton, OL9 9QP

HEARINGS

HOUSE HOLDER

ADVERTISEMENTS

APPEAL DECISIONS

PA/341695/18	23-25 King Street, Oldham, OL8 1DP
Original Decision	Del
Appeal Decision	Allowed

PA/341390/18	Texaco Hollinwood Filling Station, 257 Manchester Road, Oldham Council
Original Decision	Del
Appeal decision	Allowed



RECOMMENDATION - That the report be noted.

The following is a list of background papers on which this report is based in accordance with the requirements of Section 100D (1) of the Local Government Act 1972. It does not include documents, which would disclose exempt or confidential information as defined by that Act.

Files held in the Development Control Section

The above papers and documents can be inspected from 08.40am to 4.30pm on level 12, Civic Centre, West Street, Oldham.



Appeal Decision

Site visit made on 12 November 2018

by **A Parkin BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2019

Appeal Ref: APP/W4223/W/18/3205613

Kings Hall Plaza, 23 - 25 King Street, Oldham OL8 1DP

- 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 Mr Kashaf Liaqat against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/341695/18, dated 13 April 2018, was approved on 8 June 2018 and planning permission was granted subject to conditions.
 - The development permitted is change of use of part basement and part ground floor to restaurant (Use Class A3) and takeaway (Use Class A5).
 - The condition in dispute is No 5 which states that: *The hot food takeaway and restaurant premises shall not be open for trade or business (including food preparation and deliveries) except between the hours of 9am and 12am on any day.*
 - The reason given for the condition is: *To safeguard the amenity of occupiers of residential properties (including any upper floor flats).*
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Decision

1. The appeal is allowed and the planning permission Ref PA/341695/18 for change of use of part basement and part ground floor to restaurant (Use Class A3) and takeaway (Use Class A5) at Kings Hall Plaza, 23 - 25 King Street, Oldham OL8 1DP granted on 8 June 2018 by Oldham Metropolitan Borough Council, is varied by deleting condition No 5 and substituting for it the following condition:
 - 5) The hot food takeaway and restaurant premises shall not be open for trade or business (including food preparation and deliveries) except between the hours of 11am and 2am.

Preliminary Matters

2. The address on the application form is different to that shown on the site edged red location plan, and also differs from the address on the appeal form, which does accord with the location plan. The appeal site is in the northern part of the Kings Hall Plaza building, which is No 23-25 King Street. I have therefore used the address on the appeal form in my formal decision above.
3. The Government published the revised National Planning Policy Framework (the Framework) on 24 July 2018. The appellant was notified of the publication and invited to make comments. No representations have been received in relation to this matter within the specified timescales.

Background and Main Issue

4. Condition 5 of the planning permission granted restricts the hours of operation for the restaurant / takeaway use at ground floor and basement level to between 9.00am and 12.00am. The condition seeks to safeguard the amenity of the occupiers of residential properties, including any upper floor flats. The Council considers the approved hours to be a reasonable balance between the needs of the applicant and the needs of existing and future residents of the town centre.
5. The appellant wishes to change the permitted hours of opening to between 11.00am and 2.00am the following day.
6. Therefore, the main issue is the effect of the proposed change to the opening hours of the approved development on the living conditions of nearby residents.

Reasons

7. The appeal site is at the corner of King Street and Barn Street and is a substantial 3-storey plus basement building, with some shop-type uses at ground floor level, accessed from King Street. Next door to the south is a licensed premises - *Whittles* (27 King Street), whilst to the north, across Barn Street, is a Bridal clothing shop. On the western side of King Street opposite the appeal site is a large bingo hall and car park.
8. I have had regard to the six tests for planning conditions set out in paragraph 206 of the Framework, and in Planning Practice Guidance (PPG).
9. The approved development is in the town centre, where a mix of uses, including restaurants and takeaways such as the appeal use, shops, bars, and nightclubs are likely to be found.
10. The Council has not identified any existing residents who would be affected by the approved development and during my visit to the area, I did not observe any dwellings in the vicinity of the appeal building. Nor is there any other information before me that suggests that there are any nearby residential uses, such that I see no reason why Condition 5 is necessary to protect the living conditions of existing residents.
11. In terms of future residents, the Council makes reference to a planning application¹ for the conversion of the upper floors of the appeal building to 12 residential units, which the evidence indicates is yet to be determined. No other proposed residential development schemes are referred to. As the development proposal for the upper floors of the appeal building has not been determined I have given it only limited weight in my considerations.
12. In any event, I note the appellant's uncontested evidence² that 27 King Street next door has a license dating from 2005 which allows opening beyond the currently permitted opening hours of the appeal use, including until 2.30am Thursday to Saturday, and that the performance of live music indoors and outdoors is permitted until 2am from Thursday to Saturday. The uncontested evidence also indicates that 19A Jackson Pit, which is located a short distance

¹ Ref. PA/341835/18

² The information was downloaded from the Council's website on 19 June 2018

to the south east of the appeal building, has a license dating from 2006 that allows for opening hours until 3am Thursday to Saturday.

13. The Council has not clearly identified what potential harm Condition 5 seeks to protect against, and how this harm might be generated by the appeal use. No substantive evidence has been presented to show how the appeal use remaining open until 2am instead of 12am would cause any harm. Condition 5's restriction of the hours of opening to between 9am and 12am is not therefore necessary or reasonable.
14. For the reasons set out above, changing the opening hours of the appeal use as proposed would not adversely affect the living conditions of nearby residents and would therefore accord with Policies 4 (sustainable regeneration and prosperity), 9 (local environment) and 15 (centres) contained in the Joint Core Strategy and Development Management Policies Development Plan Document 2011, and with the Framework, in this regard.

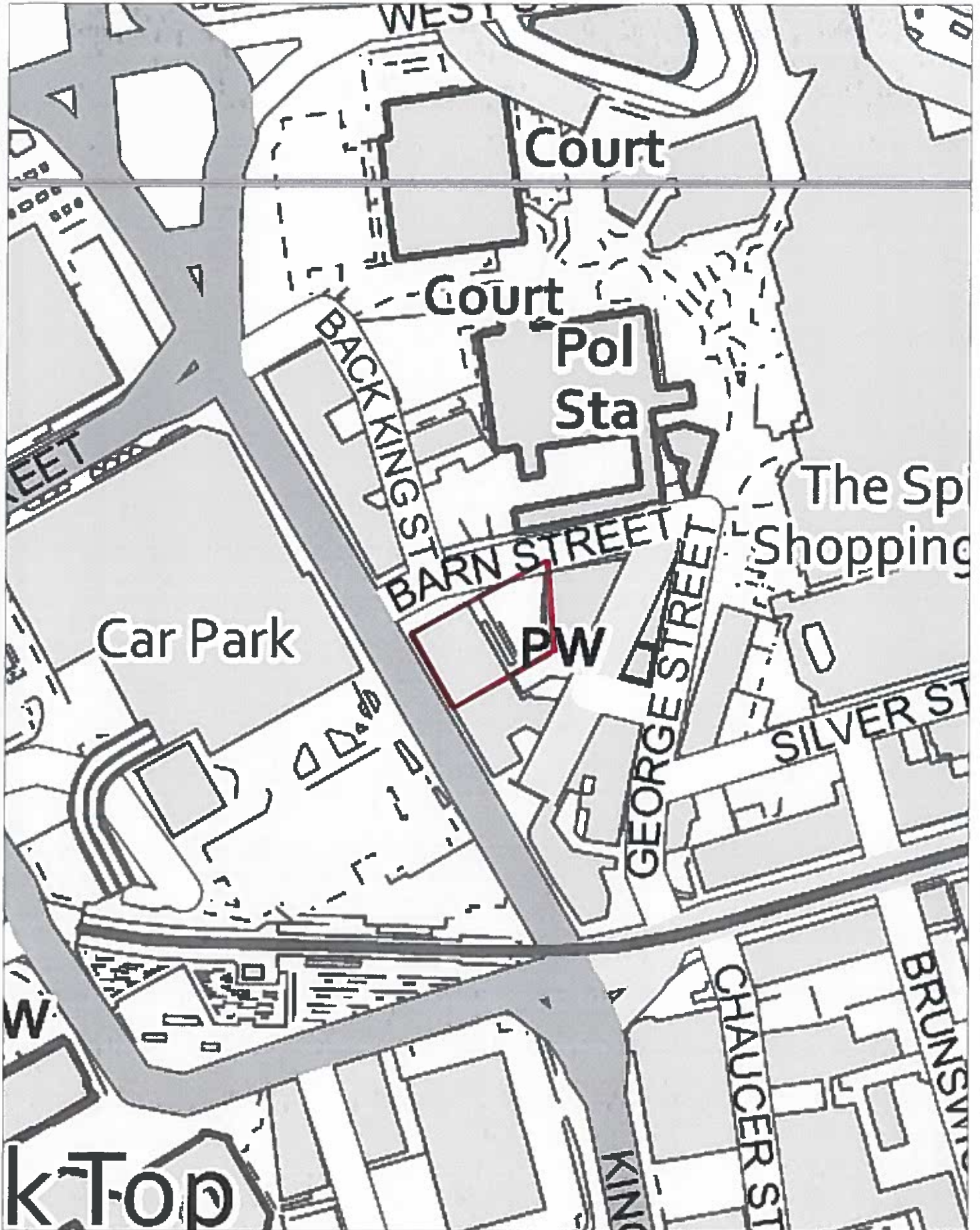
Condition and Conclusion

15. I have imposed a condition specifying the permitted opening hours, as sought by the appellant, as this provides certainty.
16. For the reasons set out above, I conclude that the appeal is allowed.

Andrew Parkin

INSPECTOR

341695



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Appeal Decision

Site visit made on 12 November 2018

by **A Parkin BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2019

Appeal Ref: APP/W4223/W/18/3209288

Texaco Hollinwood Filling Station, 257 Manchester Road, Oldham OL8 4RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Junaid Anwar of Anwar & Company Ltd against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/341390/18, dated 9 February 2018, was refused by notice dated 26 June 2018.
 - The application sought planning permission for *Petrol Station, Car Wash and Shop* without complying with a condition attached to planning permission Ref 23286/88/0, dated 15 December 1988.
 - The condition in dispute is No 5 which states that: *The use of the premises shall be restricted to the hours of 07.00 until 22.00 on any day.*
 - The reason given for the condition is: *To protect the amenities of future occupiers of dwellings on the adjoining land which is designated for residential development.*
-

Decision

1. The appeal is allowed and planning permission is granted for Petrol Station, Car Wash and Shop at Texaco Hollinwood Filling Station, 257 Manchester Road, Oldham OL8 4RH in accordance with the application Ref PA/341390/18, dated 9 February 2018, without complying with condition No 5 set out in planning permission Ref 23286/88/0 granted on 15 December 1988 by Oldham Metropolitan Borough Council, but otherwise subject to the following conditions:
 - 1) Noise from operations conducted within the premises shall not exceed 50dB (A) CNL as measured at the site boundary between the hours of 08:00 and 18.00 Monday to Saturday and 40 dB (A) CNL at any other time.
 - 2) A sight line measuring 4.5 metres by 90 metres at the junction of the site egress with Manchester Road as improved shall be provided and maintained free of all obstruction exceeding 0.6 metre in height within the splay area so formed on land under the applicant's control.

Preliminary Matters

2. The site address on the application form refers to *Hollingwood* rather than *Hollinwood*, which from the wider information before me is evidently the correct address such that I have used it in my formal decision above.

3. The application number of the original planning permission is listed as 23286/88/0 on the Decision Notice provided by the appellant. Since the permission was granted it appears that the Council has altered the format of the numbers it uses to record planning applications. The Council has applied the current format to the original planning permission (PA/23286/88) and the appellant has also used this format. Regardless of current styles, the original planning permission is numbered 23286/88/0, and I have therefore referred to this number in relation to this appeal.
4. The decision notice of the original planning permission dates from 1988 and is only available as a scanned version of a paper copy. Condition 5 is not wholly legible on the scanned copy nor is the reason. The Council has paraphrased the wording of the condition in its officer report and appeal statement. However, the appellant has listed what appears to be an accurate description of what Condition 5 says, and the substance of the matter is not in dispute between the parties. I have therefore used the wording provided by the appellant on their Appeal Statement in relation to this appeal, as it appears to accord with what is legible on the original decision notice.

Application for Costs

5. An application for costs was made by Mr Junaid Anwar of Anwar & Company Ltd against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

6. Planning permission was granted for a petrol filling station at the appeal site in 1988. Condition 5 limited the hours of operation of the petrol station to between 07.00 and 22.00. Condition 5 was imposed to protect the living conditions of the future occupants of houses to be constructed on adjoining land, which was designated for housing development at the time planning permission was granted. The land to the south east of the petrol station does now contain a small housing estate, which is served by Moorfield Road and Chelbourne Drive.
7. The Council refused permission for the appeal proposal on the grounds that the additional noise, activity and disturbance caused by the extended opening hours at the premises would be significantly detrimental to the residential amenity of the occupiers of the nearby residential properties on Moorfield Road and Chelbourne Drive.
8. Therefore, the main issue is the effect of the removal of Condition 5 on the living conditions of nearby residents with regard to noise and disturbance.

Reasons

9. The appeal site is located adjacent to the A62 Manchester Road, which has two carriageways in both directions in this vicinity. There is a bus stop for a number of services outside the petrol station on Manchester Road. The boundary between the petrol filling station and the houses to the south east is marked by a solid timber fence around 2 metres high, supplemented by brick planters containing mature bushes of varying heights up to around 2.5 metres.

10. I have had regard to the six tests for planning conditions set out in paragraph 206 of the National Planning Policy Framework 2018 (the Framework), and in Planning Practice Guidance (PPG).
11. A letter was received by the Council objecting to the proposal on the grounds that 'increased opening hours would have a greater noise and smell impact, and the current opening hours are adequate.' The information before me also indicates that anecdotal evidence was presented to the Planning Committee meeting by a Ward Councillor, when the appeal application was reported for determination, in relation to existing noise from the petrol station experienced by residents, and the measures taken to address it. Notwithstanding this, there is no substantive evidence before me concerning this matter, including whether any such issues have led to any formal complaints to the Council.
12. A Noise Impact Assessment (NIA) was submitted as part of the supporting information for the application and used the British Standard (BS) 4142:2014 assessment process, modified so as to take the relatively high ambient noise levels from Manchester Road into account. The NIA concluded that noise from the petrol station operating throughout the night, including noise events, would have a low impact. No substantive evidence has been provided to cause me to question the methodology and conclusions of the NIA.
13. The extended hours would mean the petrol station could operate at a time when nearby residents would be likely to be at home and sleeping for some or all of the time. The Council's concern is not the overall noise level but the nature of the noise – such as cars revving, music playing, doors slamming, people talking - against relatively low ambient noise levels. According to the Council this would cause significant harm to sensitive noise receptors, and this type of noise is only a relatively small part of the NIA.
14. However, I note that the Council's Environmental Health service did not raise any concerns with the content or methodology of the NIA, which addresses overall noise levels and the impact of noise events, such as those referred to by the Council as outlined above.
15. Amongst other things, the Joint Core Strategy and Development Management Policies Development Plan Document¹ 2011 (JCSDMP) and the Framework² set out to avoid 'significant' harm or adverse impacts from development in terms of noise. However the NIA concludes that the level of impact that the extended hours of operation would be likely to have would not be significant in this regard.
16. Therefore, from the evidence before me, Condition 5 is not necessary in order to protect the living conditions of nearby residents with regard to noise and disturbance. Therefore, its removal would not conflict with Policy 9 (local environmental quality) of the JCSDMP, or with the Framework, in this regard.

Other Matters

17. Whilst the Council's Environmental Health service did not object to the proposed development, it did request that a temporary approval be granted for 12 months, in order to assess any potential effects on nearby residents.

¹ Policy 9 iii) (local environmental quality)

² Paragraph 180 a)

However, for the reasons outlined above, I have no good reason to believe that this would be necessary.

18. The Council refers to the statutory nuisance regime of the Environmental Protection Act 1990, which in their opinion is not the appropriate way for dealing with the impact of the development on nearby residents. However, as I have not found good reason to conclude that the removal of Condition 5 would significantly affect the living conditions of nearby residents, I have had only very limited and non-determinative regard to this.

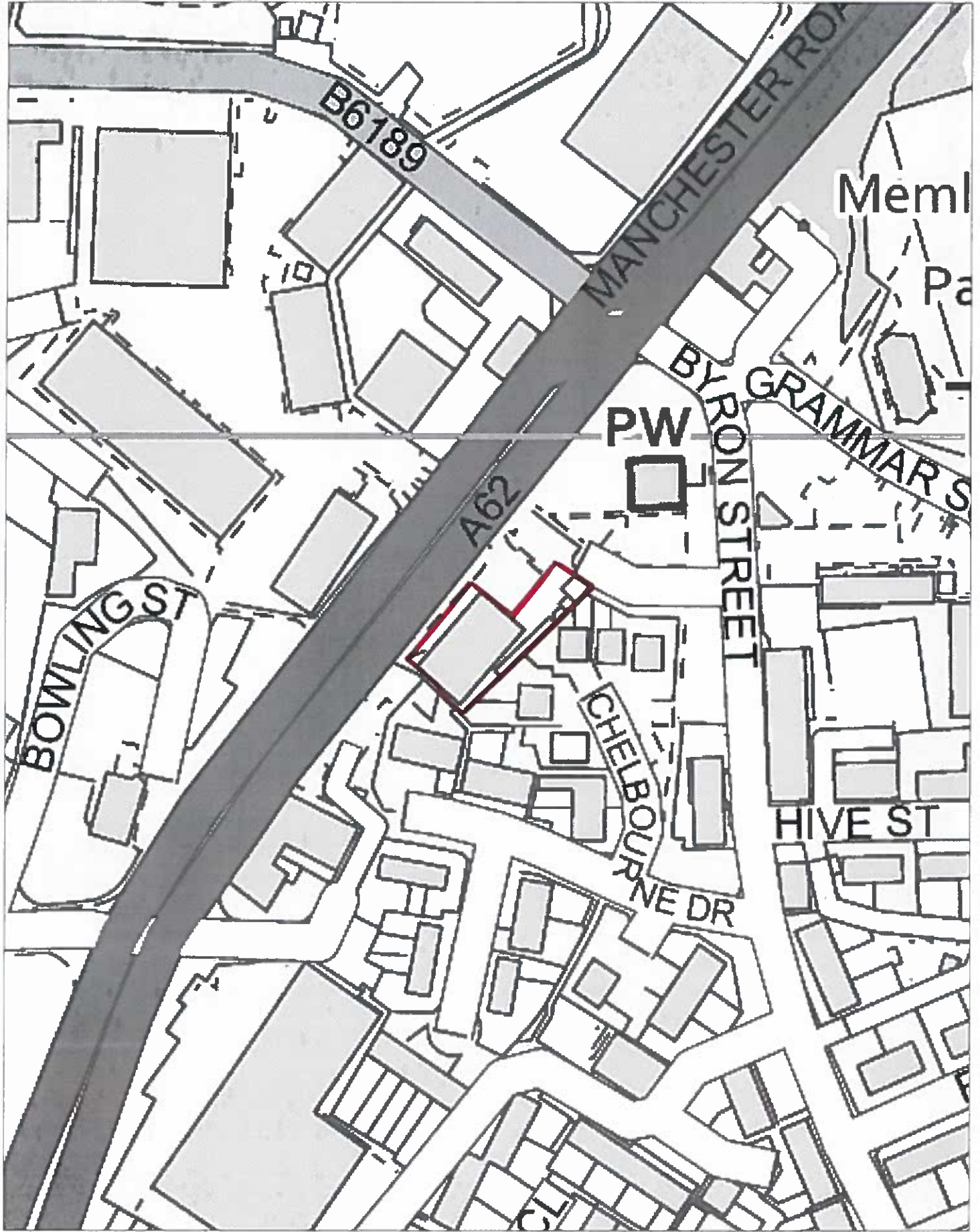
Conditions and Conclusion

19. The Council has suggested two of the conditions attached to the original planning permission are necessary, should the appeal be allowed. I have considered these conditions in the light of government guidance. A condition limiting noise from the appeal development is necessary to protect the living conditions of nearby residents. The retention of a sightline at the junction of the site with Manchester Road is necessary in terms of highway safety.
20. For the reasons set out above, I conclude that the appeal should be allowed.

Andrew Parkin

INSPECTOR

341390



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