
Appeal Decision

Site visit made on 4 October 2016

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2016

Appeal Ref: APP/M4510/W/16/3154651

68 St Georges Terrace, Jesmond, Newcastle Upon Tyne NE2 2DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D Robson against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2016/0067/01/DET, dated 15 January 2016, was refused by notice dated 21 March 2016.
 - The development proposed is a change of use from residential (C3) to cafe (A3).
-

Decision

1. The appeal is dismissed.

Procedural Note

2. In support of the planning application the appellant submitted a noise assessment. An addendum to that assessment, dated July 2016, was submitted as part of the appeal documentation. The addendum states that further concessions are proposed in order to mitigate the impact of noise.
3. The further concessions proposed are the removal of car parking space at the front of the property; a reduction in the opening hours of the proposed establishment to 20:00hrs and the provision of acoustic ventilation to the first floor flat above. The addendum concludes that subject to these concessions, noise would not materially affect residential amenity in the vicinity of the proposed cafe.
4. I have taken the addendum into consideration in deciding this appeal.

Main Issues

5. The main issues are the effect of the development on i) the living conditions of the occupiers of adjoining and nearby properties with particular regard to noise and disturbance, outlook and amenity space and ii) the character and appearance of the area.

Reasons

Living conditions

6. The appeal site is within a mixed use part of Jesmond. It is directly opposite a church with a small supermarket and parade of shops to the south. However despite the mixed use character of the area, the appeal site is at the end of a
-

- long residential terrace, separated from the aforementioned commercial uses by the buffer of intervening streets.
7. The proposed cafe would have the existing first and second floor flats at No 68 directly above. It would also adjoin a neighbouring ground floor flat at No 70 St Georges Terrace, which itself has flats above. The proposal would therefore be very closely related to existing residential properties.
 8. I have no reason to doubt that the various measures put forward in the appellant's noise assessment and addendum aimed at mitigating noise impact would, if implemented, be effective. Notwithstanding this, the assessment includes the proviso that the model does not account for customers standing outside the proposed cafe smoking and talking. It recommends that this area should be designated as a non-smoking area.
 9. Because of the nature of the proposal it is likely that groups of people would seek to congregate at the front of the premises on arrival or departure. This will inevitably result in some conversations and interactions between people with raised voices and laughter which would be audible to residents of the flats adjoining and close to the appeal site. Irrespective of noise level, the sudden experience of such noise when unexpected would be a source of disturbance and irritation for residents seeking to enjoy their homes.
 10. Whilst such disturbances would not be constant, they are likely to occur frequently but unpredictably. The nature of such disturbance which, it is undisputed, has not been modelled and accounted for in the noise assessment, would be harmful to the living conditions of adjoining and nearby residents. I acknowledge that the appellant proposes to prohibit smoking outside the cafe. This however, would be very difficult to enforce and in any event would not overcome the concerns I have raised above regarding loud conversations associated with the general congregation of people.
 11. Given that the appellant proposes that the cafe would remain open until 8pm, the disturbance may arise at times when residents would reasonably expect to enjoy the peace and quiet of their homes.
 12. From my visit I noted that the forecourt area of the appeal site would nominally allow for four car parking places. However two of these spaces would be constrained by the spaces immediately behind and as such are unlikely to be attractive for customer use. In addition, given that the area is densely populated it would be reasonable to assume that many customers would arrive on foot. Accordingly the proposal would not result in significant disturbance from customer vehicles arriving at and leaving the site. Whilst the removal of all parking provision to the front of the appeal site would be expected to deliver marginal benefits in terms of noise impact, such benefits would not outweigh the harm identified above.
 13. Similarly the servicing requirements of what would be a relatively small business would be likely to take the form of infrequent visits from small vehicles that would not be expected to harm the living conditions of adjoining residents. This however, does not overcome the harm I have already identified.
 14. I acknowledge that the proximity of other commercial uses would result in more activity and higher levels of background noise than would normally be

expected in a predominantly residential location. However I consider the buffer of intervening streets allows for a break in activity which benefits the living conditions of the nearby residents of St. Georges Terrace.

15. The proposed rear extension would adjoin the side boundary of the neighbouring property at No 70 resulting in a marked increase in the height of the side boundary wall. The effect of this would be to increase the sense of enclosure in relation to the rear of the ground floor flat at No 70, in a densely built up location where space is already tightly confined by the narrow layout of the plot.
16. In particular this would be harmful to outlook from kitchen and living room windows and the adjacent external yard area, all of which would be in close proximity to this side boundary of the property. This increased sense of enclosure would feel oppressive for the ground floor flat residents.
17. The extension would also infill the yard space at the rear of the appeal property. In so doing, whilst outlook for the residents of the upper floor flats in the appeal property would not be harmed, it would remove external amenity space that would otherwise be available to these occupants. This would be detrimental to their living conditions.
18. I conclude that the proposal would cause harm to the living conditions of the occupiers of adjoining and nearby properties with particular regard to noise and disturbance, outlook and amenity space. Accordingly it would be in conflict with Saved Policies EN1.1 and H2 of the Newcastle upon Tyne Unitary Development Plan 1998 (UDP), Policies CS14 and CS15 of the Gateshead and Newcastle Core Strategy and Urban Core Plan 2015 (CSUCP) and with the National Planning Policy Framework (the Framework) insofar as they seek to safeguard the living conditions of residents.

Character and appearance

19. The proposed flue would be partly internalised within the extension, emerging towards the rear of the site, returning and rising against the rear elevation of the property. Whilst the flue would be bulkier than typical rainwater goods, it would terminate well below the ridge height of the main dwelling.
20. In addition the rear of the terrace is not particularly prominent within the public realm, facing onto a back lane serving the St Georges Terrace properties and with a good degree of separation between the rear of dwellings in the adjacent terrace. The predominant flat roof of the extension would not be prominent in relation to the back lane.
21. I therefore conclude that the proposal would not result in harm to the character and appearance of the area. It would therefore be in keeping with saved Policy EN1.1 of the UDP, Policy CS15 of the CSUCP and the Framework insofar as they seek to promote good design and a positive response to local character and distinctiveness.

Other Matters

22. The appellant has made a number of further points in support of the proposal. It is stated that a similar extension could be erected for residential purposes under permitted development rights. From the limited information I have been provided with, I am unable to conclude that this would be the case. However,

in any event, in the absence of a firm proposal that such an extension is intended and likely to be constructed, no significant weight can be attached to this suggested fallback position.

23. I also acknowledge that the proposal would have a positive impact on employment, benefitting the local economy and would increase customer choice. Furthermore I have no reason to doubt that the site is within an accessible location close to public transport connections. However these factors, together with any similar large extensions at different sites, do not justify the harm I have identified in this case which I must consider on its own merits.
24. Whilst the Framework seeks a positive approach to delivering sustainable development, the proposal would result in harm to the living conditions of the occupiers of adjoining and nearby properties. The development would therefore be in conflict with one of the core principles of the Framework and out of keeping with the Framework when taken as a whole.

Conclusion

25. I have not found harm in terms of character and appearance. However this does not outweigh my negative findings regarding impact on living conditions for residents. Therefore having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Roy Merrett

INSPECTOR