
Appeal Decision

Site visit made on 31 October 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 2nd December 2016

Appeal Ref: APP/M3455/W/16/3156909

472 Chell Heath Road, Chell Heath, Stoke-on-Trent ST6 6QD

- 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 W Wang against the decision of Stoke-on-Trent Council.
 - The application Ref 59752, dated 27 April 2016, was refused by notice dated 21 June 2016.
 - The development proposed is change of use of convenience store (A1) to fish and chip shop (A5) with extraction flue at rear.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of convenience store (A1) to fish and chip shop (A5) with extraction flue at rear at 472 Chell Heath Road, Chell Heath, Stoke-on-Trent ST6 6QD in accordance with the terms of the application, Ref 59752, dated 27 April 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan and Location Plan, and JPK/16/3605/1 (dated March 2016).
 - 3) The use hereby permitted shall not be open to customers outside of the following times: 1100-2200 hours on Mondays to Saturdays.
 - 4) Notwithstanding condition 2, the use hereby permitted shall not take place until details of the matters listed below have been submitted to and approved in writing by the local planning authority and all of the schemes have been installed and implemented in accordance with the approved details. Thereafter the facilities shall be retained in accordance with the approved details and maintained and serviced in accordance with the manufacturers specifications: -
 - a. Precise details of the extraction flue and associated equipment / facilities for extraction of fumes and cooking odours.
 - b. Precise details of noise mitigation measures, including but not limited to, noise insulation between the commercial premises and adjoining residential premises, and the control of noise for any plant and/or equipment to be installed on site.
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Main Issues

2. The main issues are:

- the effect on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance, and;
- the effect of the extraction system on the outlook of occupiers of adjacent residential properties and the character and appearance of the area.

Reasons

Living conditions - noise and disturbance

3. The appeal site consists of a semi-detached property on the eastern side of Chell Heath Road that is currently vacant. The property was most recently in use as a convenience store (A1 use¹) at ground floor level with ancillary residential accommodation above that is accessed through the ground floor premises. The property has garage parking at the side and an open area of hardstanding at the front which provides off street parking for 3 vehicles. The adjoining semi-detached property (No 470) and the semi-detached properties to the opposite side (Nos 474 and 476) are in residential use.
4. Although the properties on the eastern side of Chell Heath Road and those facing Buckley Road at the rear are predominantly residential in character, there are commercial uses in the vicinity of the site. This includes a public house (with an associated off licence advertised) and car parking to the other side of No 470 and a designated local centre on the opposite side of Chell Heath Road. The local centre consists of some night time uses including 3 hot food takeaways and a convenience store / off licence. A bus stop is located opposite to No 470.
5. Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 - 2026 (CSS), adopted October 2009, contain general objectives for development proposals, including ensuring a balanced mix of uses that work together. Furthermore, the explanatory text indicates that a relevant factor is the quality of relationships between development and surrounding areas and the appropriateness of the function of the building in its context. Such considerations reasonably include the effect on the living conditions of neighbouring properties.
6. With regard to the above, the Council have expressed specific concerns regarding the noise and disturbance generated by customers of the proposed takeaway. Existing signage to the front of the property indicates that the opening times of the most recent retail use of the building were 0600-1800 hours daily. However, it is my understanding that the use of the building for retail is not subject to restrictions in terms of opening hours. The proposed opening times for the fish and chip shop (A5 use) would be 1100-2200 on Mondays to Saturdays, with no opening on Sunday or Bank Holidays.
7. The appeal site fronts a moderately trafficked route between the A527 and the B5051, and there is also an access road from the A5272 via Spring Bank Road, with the junction consisting of a roundabout also serving Cornhill Road. In this regard and taking account of the nearby bus stop, traffic noise is likely to have

¹ As defined in the Town and Country Planning (Use Classes) Order 1987

an effect on the living conditions of residents along this part of the route for much of the day and well into the evening.

8. It is reasonable that a significant proportion of customers would walk to the premises. Furthermore, the frontage of the premises has been used for parking associated to the convenience store. Due to the location of on-site parking and alternative parking bays available in the local centre opposite, customers arriving in vehicles would have only a short distance to walk to the premises, which would likely restrain levels of on-street parking. In this respect, there is no substantiated evidence before me that any increase in noise generated by the stopping and starting of vehicle engines or the opening or shutting of vehicle doors would be significant when compared with the established use, which could open late into evenings. In addition, the proposed customer waiting area in the premises would be spacious and should have the capacity to accommodate all waiting customers. Consequently, there should be no regular need for customers to wait or congregate in the street.
9. In any case, there would be existing activity associated to pedestrians and vehicles visiting the commercial premises within the surroundings area during the opening hours proposed. For example, the public house variously closes between 2300 and 0100 hours, and an associated off licence is advertised as opening between 1000-2200 hours daily. There are also businesses in the local centre that are open as late as 0030 hours during the week and 0130 hours at weekends. In such circumstances, the coming and going of customers to existing premises is likely to create noise and disturbance throughout the day and into evenings.
10. Having regard to the above and taken account of the fallback position of the use of the property as an A1 use with unrestricted opening hours, I am satisfied that the noise generated by customers visiting the appeal premises on foot and by car would not be unduly disturbing for residents if opening hours are suitably restricted. The proposed opening times of 1100-2200 hours on Mondays to Saturdays appropriately reflect a closing time in evenings after which a quieter living environment for residents would ordinarily be expected, particularly at Nos 474 and 476 and other properties further to the north that are more distant from the activity associated to the public house.
11. In reaching the above findings, I have also taken into account that the Police were consulted and offered no objections, as anti-social behaviour in this area is not being driven by the number of existing hot food takeaways and would not be adversely affected by a closing time of 2200 hours.
12. Internally, noise insulation measures can be implemented to preserve the living conditions of occupiers of both the first floor flat and the adjoining No 470 from internal noise associated to the use, which is something that could be dealt with by condition prior to the use taking place. In this regard, I note that the Council's Environmental Health Officer did not raise concerns regarding noise and disturbance relating to the appeal scheme.
13. Concerns were also expressed by local residents with respect to the effect of odours. The appellant has provided indicative details of an extraction flue in this respect. Nevertheless, more specific details would be required in terms of the other equipment to be installed and operated to ensure the necessary level of odour reduction and dispersal, together with the measures to minimise noise and vibration that could otherwise affect neighbouring properties. Taking into

account an absence of an objection from the Council's Environmental Health Officer, I am satisfied that adequate control of emission of noise and odours could be achieved and can be secured by the imposition of suitable conditions.

14. I conclude that, subject to the imposition of a condition to limit the opening hours of the premises and to secure details of noise and odour mitigation measures, the proposal would not unduly harm the living conditions of occupiers of neighbouring properties. The proposal would not, therefore, conflict with Policy CSP1 of the CSS. The policy is consistent with the National Planning Policy Framework (the Framework) which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Extraction system – outlook, character and appearance

15. The proposed extract flue would be located on the rear wall of the property with a horizontal alignment of ducting above an existing single storey flat roof extension until adjoining the side of an existing two storey side and rear extensions. At that point where it meets the two storey extension the ducting would turn upward to a vertical extract flue with a limited projection above the height of the existing extension roof.
16. With respect to character and appearance, the proposed extract flue and ducting would have a utilitarian appearance. However, due to its position at the rear of the property with only limited projection above an existing extension, it would not be visually prominent or have a harmful effect on the character and appearance of the Chell Heath Road street scene.
17. The position of the ducting and extract flue would ensure that it would be appropriately screened from the outlook of No 474 by the existing extension. In addition, views from No 470 would be indirect from the rear elevation and set discreetly against the background of existing rear extensions when viewed from its rear garden. The ducting and flue would be visible from the rear elevation of properties which face Buckley Road, but such views would be set against the backdrop of the buildings and its existing extensions. Consequently, although the design of the extract flue and ducting has a commercial appearance that is not an ordinary feature of residential areas, on balance, given its unobtrusive siting and the context of other commercial uses beyond No 470, it would not have an unacceptable impact upon the outlook of occupiers of neighbouring properties.
18. I conclude that the proposal would not have a harmful effect on the outlook of the occupiers of adjacent residential properties and the character and appearance of the area. The proposal would not, therefore, conflict with Policy CSP1 of the CSS and the associated guidance in the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document, adopted February 2010, in so far as the policy seeks that development respects the character, identity and context of townscape, the quality of relationships between development and surrounding areas, and the appropriateness of the function of the building in its context. The policy is consistent with the Framework.

Other Matters

19. Interested parties have raised concerns with respect to highway and pedestrian safety, including reference to fatal and minor accidents in the vicinity of the

site. However, specific accident records relating to the locality are not before me. During my visit, I observed that exiting the off street car parking spaces would require reversing manoeuvres onto Chell Heath Road where visibility is partially obscured by boundary treatments adjoining both Nos 470 and 474. However, this is an existing arrangement both typical of the appeal property and surrounding residential properties, with precedent of existing accesses closer to the roundabout and bus stop.

20. Although there are no on-street parking restrictions at the front of the site or the residential properties to either side, I observed no on-street parking along Chell Heath Road and that the route was well served by street lighting. It is reasonable to consider that on-street parking at peak times when the use is in operation could be higher than during my visit. However, the Council have indicated that it does not consider that the proposed use would result in higher vehicle movements or levels of parking demand than the previous use of the premises. In such circumstances, the proposal would not have an unacceptable impact on highway or pedestrian safety when compared to the established use of the premises.
21. There is no substantive evidence before me that the proposal would have an adverse effect on childhood obesity rates in a location with a number of alternative hot food takeaways nearby. Concerns have also been expressed regarding the number of hot food takeaways in the local area, that the site is outside of a local centre and in terms of litter. However, there is no policy requirement to establish need for an A5 use and the property has a fallback position of an A1 use in an out of centre location. In such circumstances, permitting flexibility of format of use is appropriate to facilitate reuse of a vacant property and the associated economic and employment benefits to the local area. Litter is an issue that can be controlled under other legislation.

Conditions

22. The Council provided a suggested list of conditions, which I consider are necessary to provide certainty in terms of the planning permission granted in terms of a time limit for the development to commence and to ensure that the development is carried out in accordance with the approved plans. The other suggested conditions relate to restrictions on opening hours and details of the extraction flue, odour and noise mitigation measures which I have previously referred to as necessary. Where appropriate, the wording has been slightly amended to accord with paragraph 206 of the Framework.

Conclusion

23. For the reasons given above and taking all other matters in account, I conclude that the proposal would accord with the development plan and the Framework as a whole. Accordingly, the appeal should be allowed and planning permission granted.

Gareth Wildgoose

INSPECTOR