

Appeal Decision

Site visit made on 17 January 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 31 January 2017

Appeal Ref: APP/E2340/W/16/3160101

115 Manchester Road, Nelson BB9 7HB

- 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 Mubashir Arif against the decision of Pendle Borough Council.
 - The application Ref 16/0396/FUL, dated 27 May 2016, was refused by notice dated 2 August 2016.
 - The development proposed is sub-division of existing retail (A1) unit at ground floor level to create retail unit and café/restaurant (A3), with alterations to shop front and installation of flue to rear roof slope.
-

Decision

1. The appeal is allowed and planning permission is granted for sub-division of existing retail (A1) unit at ground floor level to create retail unit and café/restaurant (A3), with alterations to shop front and installation of flue to rear roof slope at 115 Manchester Road, Nelson BB9 7HB in accordance with the terms of the application, Ref 16/0396/FUL, dated 27 May 2016, subject to the conditions set out in the attached schedule.

Procedural Matters

2. I have adopted the more complete and detailed description of the development employed by the Council in their decision notice, and adopted by the appellant in subsequent submissions, as it more accurately describes the proposal. Neither party would be disadvantaged by my adoption of this revised description, which I have set out above.

Main Issues

3. The main issues are the effect of the proposed development on:
 - The living conditions of occupiers of adjacent residents, with particular regard to noise, disturbance and odour; and
 - Highway safety.

Reasons

Living Conditions

4. The appeal property is located on Manchester Road within a predominantly residential area a short distance from Nelson town centre. Previously used for a variety of commercial purposes but now vacant, the property adjoins a residential dwelling as part of a short terrace, with a further terrace of dwellings immediately to the rear on Hope Street. The appeal site lies diagonally opposite a short parade of commercial units on Manchester Road,
-

- which continues across to the far side of the junction with Lomeshaye Road, beyond which also lies a petrol filling station and a Subway outlet.
5. The terrace of residential properties that lie immediately to the rear of the appeal site are separated from it by a narrow back lane and small rear yards. As ground levels rise towards the south from Manchester Road, the terrace on Hope Street is set above the ground level of the rear lane which is, in turn, set at a higher level than the ground floor of the appeal property.
 6. The food preparation area for the café/restaurant use would be located at the rear of that unit. Although it would be separated from the adjoining residential property on Manchester Road by the intervening A1 shop unit, the food preparation area for the proposed café/restaurant use would be immediately opposite the rear elevations and rear yards of a number of dwellings on Hope Street.
 7. The Council claim that the use of the food preparation area would involve activity over and above that normally be associated with an A1 use. I have not been provided with any justification for such a claim, and I am also mindful of the established lawful use of the premises as an A1 retail use without control over the type, or hours, of operation of any use falling within that use class. However, even if the proposal resulted in additional activity within the food preparation area when compared with an A1 use, I do not agree that it necessarily follows that this would be immediately noticeable to adjacent residents, as the Council claim.
 8. There would be only one small window at the rear of the A3 unit, and there would be no direct access to or from either of the proposed units to the rear lane, or to the lane at the side of No 115. Moreover, due to the differences in ground levels around No 115, what would be a high level window internally at ground floor level would be a relatively low level window externally at the rear. Therefore, I am satisfied that activities within the rear of the appeal building would not be widely visible from, or overlooked by, nearby properties on Hope Street, notwithstanding their relative proximity to the building, due to the position and size of the window and the absence of doors from the kitchen area. The same applies in respect of the ground floor of the adjoining retail unit, whilst the upper floor of both units, where there are more windows, would be used for storage purposes. For these reasons, I do not consider that activities within the proposed units would be any more noticeable or apparent to residents of adjacent properties than for its lawful use.
 9. The proposed flue at the rear of the property would however be readily visible from the rear. Although shown as exiting the appeal premises at roof level, due to the differences in ground levels around No 115 and the properties on Hope Street, I concur with the Council's assessment that the extraction flue would broadly equate to a level somewhere between the ground and first floors of properties on Hope Street. However, notwithstanding its visual presence, I have no evidence before me that a flue here would not be able to suitably discharge fumes away from the premises. Indeed, it is noted that the Council's Environmental Health Services considered that appropriate odour extraction and noise mitigation equipment could be secured by appropriately worded planning conditions.
 10. I deal with highways matters below but, in terms of the operation of the proposed units, and particularly the café/restaurant use, I am satisfied that

with appropriate conditions relating to the control of fumes, odour and noise, opening hours and the detail of the refuse storage area, I am satisfied that the proposal would not have a materially harmful effect on the living conditions of neighbouring residents. The proposed opening hours of both units are noted and seem reasonable in the context of the site's location and it is noted that the Council do not expressly object to the proposed opening hours. I therefore find no conflict with the aims of policy ENV5 of the Pendle Local Plan Part 1: Core Strategy (Core Strategy) or saved policy 8 of the Replacement Pendle Local Plan (RPLP).

11. Residents have also raised other concerns in respect of living conditions, such as privacy and overlooking, instances of anti-social behaviour, or other activities at unsociable hours. However, the upper floor of the appeal site is currently indicated as being used for storage, as it is in the proposed scheme, and so the proposal would not materially alter the existing relationship between the upper floor windows with the rear elevation of nearby properties on Hope Street. Opening hours could be controlled by condition and I have no evidence before me to suggest that the proposal would lead to instances of anti-social behaviour. These factors are not therefore sufficient to alter my conclusions in respect of living conditions, as set out above.

Highway Safety

12. Manchester Road is, for a considerable distance in both directions from the appeal site, subject to parking and waiting restrictions. The back lane between the appeal site and Hope Street provides some unrestricted on street car parking, but it is narrow and parking is effectively restricted to just one side of the lane to allow for single-file access along the other side. Residents confirm that parking is limited along the back lane, particularly in the evenings, a matter compounded by a lack of on street parking available to them on Lomeshaye Road or at the front of their properties on Hope Street.
13. However, whilst the appeal site does not benefit from any off street parking there is unrestricted on street parking on St Mary's Road, opposite, and on other nearby streets within a short walk of the premises. Bus stops lie directly outside the appeal site on both sides of Manchester Road and it is only a short walk along Manchester Road to Nelson town centre. Furthermore, being located within a predominantly residential area, it could be expected that some local residents will also access the premises on foot.
14. Whilst there is likely to be pressure for car parking spaces, particularly at certain times of the day, I am satisfied that there are reasonably convenient alternative locations for parking, whilst the location of the site is such that it could be also be accessed on foot and by public transport. The café/restaurant use is limited in scale, and therefore also limited in terms of its capacity for patrons. There is also, in my experience, likely to be some truth in the appellant's assumption that as patrons of a café/restaurant use are likely to stay on site for longer than when visiting a retail use, they would also be less likely to park inconsiderately.
15. I acknowledge that the introduction of the proposed café/restaurant use would result in an increased requirement for car parking spaces when compared with a retail use. However, in the absence of any off-street car parking, any parking requirement would have to be met within the surrounding streets, and I am also mindful in this respect of the lawful A1 retail use of the existing premises,

and particularly the range and nature of activities that would fall within that broad use class. I have also been referred to previous parking issues in connection with requests to relax parking restrictions on this part of Manchester Road, but note that that was some time ago and I have not been referred to any more recent examples of on-going concerns.

16. Thus, although the availability of parking immediately around No 115 on Manchester Road and the back lane is either prohibited or limited, it has not been adequately demonstrated that the proposal would generate additional traffic or parking that would conflict with the free flow of traffic into or out of Nelson town centre. Nor, I conclude, has it been demonstrated that the highway safety impacts of the proposal would be severe or that safe or suitable access to the site could not be provided for all, as set out in the National Planning Policy Framework.

Other Matters

17. The site is located within the St Mary's and Whitefield Conservation Areas, where section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The Council have concluded that the proposal would not result in any adverse impacts to the character or appearance of the conservation area. Subject to an appropriate condition to secure details of the shop front amendments I agree, and its historic significance would be preserved, in accordance with Core Strategy policies ENV1 and 2, and RPLP saved policies 10 and 13.
18. Local residents have raised a number of other matters, including that there are too many fast food outlets in Nelson, particularly on Manchester Road, and that this leads to health problems. However, I note that the proliferation of such outlets did not form a reason for refusal, and I saw nothing at my site visit to persuade me that such exists at, or around, the appeal site. I have no evidence before me to lead me to conclude that the presence of the proposal would have a direct correlation to obesity or that it would encourage unhealthy eating, and I therefore attach limited weight to this matter.

Conditions

19. I have considered the Council's suggested conditions in light of the Framework and Planning Practice Guidance, and have amended them where necessary. In addition to the time limit condition and a condition specifying the approved plans in order to provide certainty, I have imposed three other conditions that are necessary to safeguard the living conditions of neighbours. Additionally, I have also imposed a further condition to secure details of proposed alterations to the shop front, which I find to be necessary in the interests of the character and appearance of the property and of the conservation area.

Conclusion

20. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF 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: Proposed Change of Use – Rev 'B'.
- 3) The premises shall not be open for customers or any other persons not employed within the business operating from the site outside the following hours:
A3 café/restaurant unit
09:00 and 22:00
A1 retail unit
09:00 and 21:00
- 4) The A3 use hereby approved shall not commence unless and until a scheme for the extraction, treatment and dispersal of fumes and odours has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a. the provision of odour filters
 - b. the siting and finished design of any external ventilation stack; and,
 - c. details of any measures which are necessary to attenuate noise from the ventilation stack

The approved scheme shall be implemented prior to the use commencing and shall thereafter be operated and maintained in accordance with the agreed details and the manufacturers specifications and be retained for so long as the use continues. No preparation of hot food shall be carried out on the site except during such times as the approved extraction and treatment equipment is operational and effective to the level of the approved scheme.
- 5) The uses hereby approved shall not commence unless and until details of proposed screening to the bin stores at the rear of the site has been submitted to and approved in writing by the local planning authority. The agreed screens shall be installed prior to the first use of either site and retained in accordance with the agreed details thereafter.
- 6) Prior to any alterations to the shop frontage, detailed plans and sections of any proposed new or replacement windows and doors at a scale not less than 1:20, together with details of proposed finishes, shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in strict accordance with the approved plans.