
Appeal Decision

Site visit made on 6 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/B3030/W/16/3164759

**Newark and Sherwood Play Support Group, Edward Avenue,
Newark on Trent NG24 4UZ**

- 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 Mrs Stephanie Worthington on behalf of Farndon Farmshop Ltd against the decision of Newark & Sherwood District Council.
 - The application Ref 16/00992/FUL, dated 19 June 2016, was refused by notice dated 7 September 2016.
 - The development proposed is change of use of premises from B1 offices to A1 (retail) to include a butchery & tea room.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of premises from B1 offices to A1 (retail) to include a butchery & tea room at Newark and Sherwood Play Support Group, Edward Avenue, Newark on Trent NG24 4UZ in accordance with the terms of the application, Ref 16/00992/FUL, dated 19 June 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; CDD/16/069/01; CDD/16/069/02; CDD/16/069/04.
 - 2) Notwithstanding condition 1, within 3 months of the date of this permission a scheme of hard and soft landscape works, including details of boundary treatments and landscape planting to the Edward Avenue frontage, shall have been submitted to and approved in writing by the local planning authority. All landscaping works shall be carried out in accordance with the approved details before the end of the first planting season following the receipt of approval in writing from the local planning authority. Any trees or plants which within a period of 5 years from substantial completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.
 - 3) The use hereby permitted shall not be open to customers and deliveries and vehicle movements to and from the site directly related to the approved use shall not take place outside of the following times:

0800 - 1700 hours on Mondays to Saturdays.
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Procedural Matter

2. At the time of my visit, the building was in use as a butchery and tea room, removal of leylandii trees on the road frontage had taken place and the car parking area within the site had been laid out. I have determined the appeal on that basis.

Main Issues

3. The main issues are:
 - whether the proposal would preserve or enhance the character and appearance of Newark Conservation Area, and;
 - the effect on the living conditions of the occupiers of neighbouring properties, with particular regard to noise, disturbance and parking.

Reasons

Character and appearance

4. The appeal site lies within the Newark Conservation Area which covers a large area, comprises a mix of designs and styles of buildings and includes part of the historic town centre and riverside that makes a significant contribution to its significance. The site is located on the eastern side of Edward Avenue and to the west of Victoria Terrace in a predominantly residential area consisting of a variety of buildings that make only a limited contribution to the significance of the Conservation Area.
5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 131 of the Framework requires that account be taken of the desirability of sustaining and enhancing the significance of heritage assets, and of new development making a positive contribution to local character and distinctiveness. Paragraph 132 of the Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation. The Framework also makes it clear that significance can be harmed or lost through alteration of a heritage asset or development within their setting.
6. The areas of hardstanding, low density and modest height of detached buildings within the site, together with the similar character of neighbouring land to the south, are inconsistent with the surroundings of taller two storey terraced rows and larger modern buildings in the compact street network. Consequently, the established presence of the building and hardstanding within the site offers little contribution to the significance of the Conservation Area.
7. The change of use of the site with limited external alterations to the building that have taken place has benefitted the appearance of the building and immediate surroundings. This is reflected in bringing the vacant site back into use, preventing the building falling into disrepair and removal of a shipping container, which would have been an incongruous feature. However, the leylandii trees would have previously provided a more verdant appearance to the Edward Avenue frontage and a degree of screening to mitigate the stark contrast of the site with the predominantly residential character of its surroundings.

8. There is no indication that the leylandii trees were subject to Tree Preservation Order, however, given their location in the Conservation Area they were subject to protection from indiscriminate felling. In this respect, a tree survey undertaken in accordance with BS 5837: 2012 was provided with the application, which categorised all of the trees as 'C', which are described by the British Standard as unremarkable trees of low quality with very little merit. In such circumstances, the leylandii trees were not suitable for long term retention and were suitable for removal. However, the loss of the trees has had an adverse effect upon the character and appearance of the Edward Avenue frontage of the site. To mitigate the impact of the tree loss and prevent permanent harm to the character and appearance of the Conservation Area, a condition is necessary to secure replacement landscaping.
9. It is reasonable to consider that the activity in terms of comings and goings of vehicles and pedestrians to the site consists of an increase when compared with the previously vacant site. However, the evidence before me indicates that a fallback exists whereby a range of lawful B1 uses could be re-established with no control relating to hours of use or associated activities. Furthermore, there is precedent of commercial uses at an adjacent property to the south and a school nearby to the west of Edward Avenue. Associated activity within the surrounding area in terms of pedestrians and vehicles is a feature of the locality during 0800-1700 hours on Mondays to Fridays which reflect the opening and delivery hours proposed. The proposal, therefore, does not have a significant effect on the patterns of activity and established character of the surrounding area during those periods.
10. During the proposed opening hours of 0800-1700 hours on Saturdays, non-residential activity in the immediate surroundings of the site would be less common. However, I must take into account that there is a fallback position of an unrestricted B1 use operating at the site during that period of time. Consequently, if opening hours and deliveries of the proposal are appropriately controlled by condition, there would be no adverse effect on the character of the Conservation Area in terms of activities associated to the use proposed.
11. Having regard to all of the above, I conclude that the development, subject to the imposition of the previously stated condition, would preserve the character and appearance of Newark Conservation Area. The development would not, therefore, conflict with Policies CP9 and CP14 of the Newark and Sherwood Core Strategy (CS), adopted March 2011, and Policies DM5 and DM14 of the Newark & Sherwood Local Development Framework Allocations & Development Management Development Plan Document (AM&DM), adopted July 2013. When taken together the policies seek to ensure the continued preservation and enhancement of the character, appearance and setting of heritage assets and the historic environment, including conservation areas. The policies are consistent with the Framework.

Living conditions

12. Policy DM5 of the AM&DM states that development should have regard to its impact upon the amenity of surrounding land uses and neighbouring development to ensure that the amenities' of neighbours and land uses are not detrimentally impacted.
13. The site has a single access from Edward Avenue that leads to the main entrance of the building on the facing elevation, a car parking area within the

site and an additional area of hardstanding to the east of the site where delivery vehicles were parked during my visit. On the main elevation of the building facing the main car park, there is an additional customer entrance, together with sliding doors located further towards the rear of the site which is used for deliveries.

14. The building is single storey and there are no changes proposed to existing windows. There are significant boundary treatments between Nos. 43-47 Edward Avenue located to the north and Nos. 5-9 Victoria Terrace to the east which prevent any significant overlooking or loss of privacy. Furthermore, there is also no adverse effect on the properties opposite on Edward Avenue in that regard given the closer relationship of the existing highway and associated footways to those properties.
15. Edward Avenue and Victoria Terrace are predominantly residential in character. However, as previously mentioned, there is an existing commercial use to the south of the site and a school immediately to the west of Edward Avenue. In addition, the site although recently vacant has had a historic commercial use and retains a fallback position of such uses being re-established. In such circumstances, the residential surroundings of the site are likely to experience activity and noise in terms of pedestrians and vehicles for much of the day, particularly on Mondays to Fridays.
16. It is reasonable that the use of the premises as butchery & tea room would result in an increase in vehicle and pedestrian activity when compared to the previously vacant site or a predominantly office use. However, given the small scale of the proposed use there is no substantiated evidence before me that such an increase would be significant relative to the established pattern of activity in the local area. Due to the location of on-site parking, customers arriving in vehicles would have only a short distance to walk to the premises, which would likely restrain levels of external noise and activity. Any increase in noise generated within the building, by the stopping and starting of vehicle engines or the opening or shutting of vehicle doors would not be significant when compared with the fallback position of the established use, which could open earlier in mornings, later into evenings and for longer periods at the weekend than proposed.
17. With regard to the above, the noise generated by customers visiting the appeal premises on foot and by car and deliveries would not be unduly disturbing for residents if opening and delivery hours are suitably restricted. The proposed opening hours and delivery times of 0800-1700 hours on Mondays to Saturdays if secured by condition would appropriately reflect times of closure in the early mornings, evenings and all day on Sundays when a quieter living environment for residents would reasonably be expected. Subject to such restrictions, when taken individually or in cumulative with existing uses, I do not consider that the change of use would result in an adverse impact on the living conditions of occupiers of neighbouring properties in terms of noise and disturbance.
18. Turning to parking arrangements, the provision of 13 car parking spaces (including 2 disabled spaces) is an adequate level of off street parking available to serve the scale of the proposed use which is restricted by the floorspace available within the building. Furthermore, I observed that Edward Avenue is subject to resident permit holder parking restrictions between 0800-1800 hours on Monday to Saturday, periods which include the opening hours of the

premises and delivery times which would be restricted by condition. In such circumstances, there is no evidence before me that the development would have an adverse effect on local parking arrangements or result in undue pressure on residents parking. If overspill parking is necessary to serve the development, it would be necessarily dispersed to the wider area where short stay parking on-street is available.

19. Interested parties have raised additional concerns with respect to the butchery use, waste and related issues of odour and vermin. However, the Council's Environmental Health section offered no objection to the proposal and separate legislative controls exist with respect to food safety and waste. The presence of butchery uses in close proximity to residential properties is not an uncommon relationship. Furthermore, there is no evidence that the use would result in significant cooking odours and no ventilation system is proposed.
20. I conclude that, subject to the imposition of a condition to limit the opening hours of the premises and times of delivery, the proposal would not harm the living conditions of occupiers of neighbouring properties. The proposal would not, therefore, conflict with Policy DM5 of the AM&DM. The policy is consistent with the Framework's core planning principle of seeking a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

21. The site is located outside of Newark Town Centre, but is a sustainable location within walking distance of the town centre. The small scale of the proposal is well below the threshold in Policy DM11 of the AM&DM which discourages out of centre locations for retail provision exceeding 2 500 sq.m. There is no local or national policy requirement for a development of the scale proposed to demonstrate a need for the specific retail use.
22. The Council's Highways Authority offered no objections with respect to highway safety and I have no reason to take a different view. There is no substantiated evidence that the increase in vehicle movements or level of parking demand arising from the development would have a residual cumulative impact that would be severe in terms of traffic or highway capacity on Edward Avenue or surrounding streets. Furthermore, the existing access is safe and suitable to serve the development.

Conditions

23. The Council's evidence contained a suggested list of conditions, including provision of landscaping, together with restrictions on opening and delivery hours which I have previously mentioned as reasonable and necessary. Where appropriate, the wording has been slightly amended to accord with paragraph 206 of the Framework and to require the submission and agreement of landscaping and implementation of the agreed scheme within the first planting period thereafter.
24. As the development has commenced a condition to limit the time period of the planning permission is not necessary. However, a plans condition is included to provide certainty in terms of the permission granted.

Conclusion

25. 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 subject to conditions as set out below.

Gareth Wildgoose

INSPECTOR