



Appeal Decision

Site visit made on 16 May 2016

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/M4510/W/17/3168748

405 Stamfordham Road, Westerhope, Newcastle-upon-Tyne NE5 5HA

- 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 Anthony Lang against the decision of Newcastle City Council.
- The application Ref 2016/1891/01/DET, dated 3 December 2016, was approved on 1 February 2017 and planning permission was granted subject to conditions.
- The development permitted is change of use of existing ground floor only shop (Use Class A1) to proposed café/restaurant (Use Class A3).
- The conditions in dispute are Nos 3, 4, 5, 6, 12, 14, 15 and 16 which state that:
(3) The premises shall only be open for business between the hours of: 08:00 and 22:30 Monday to Thursday, 08:00 and 23:00 Friday and Saturday and 17:00 and 22:30 Sunday and Bank Holidays; and all customers shall leave the premises by 22:30 hours Monday to Thursday and Sunday including Bank Holidays and 23:00 Friday and Saturday; **(4)** There shall be no deliveries to or from the premises outside the hours of: 08:00 and 22:30 Monday to Thursday, 08:00 and 23:00 Friday and Saturday, and 17:00 and 22:30 Sunday and Bank Holidays; **(5)** The scheme for the extraction of fumes and odours and for the prevention of odours penetration shall be carried out in accordance with the approved: Baffle Filter canopy, Acticel Carbon Filter unit, Fan with silencer, 'Four Stage Filtration off Canopy above Cooking Range/Hob/Ovens/Spits Griddle', Combined Electrostatic Precipitator and Precipitator with UV-C, ON 100 Odour neutraliser and Visqueen vapour barrier. The approved scheme shall be implemented before the development is brought into use and retained as such thereafter. All equipment installed as part of the scheme shall be operated and maintained in accordance with the manufacturer's instructions; **(6)** The number of covers in the proposed Café/Restaurant shall not exceed 68 at any time; **(12)** The development shall not be brought into use until details of refuse storage facilities and refuse storage plan for the development have been submitted to and approved in writing by the local planning authority. The details are to include the location and design of the facilities and arrangements for the provision of the bins. The approved refuse storage facilities shall be implemented before the development is brought into use/shall be implemented before occupation. Thereafter the refuse storage facilities and refuse storage plan shall operate in accordance with approved details; **(14)** The development shall not be brought into use until the car parking area indicated on the approved plans, including any disabled car parking spaces contained therein, has been hard surfaced, sealed and marked out in parking bays. Thereafter, the car parking area shall be retained in accordance with the approved plans and shall not be used for any other purpose other than the parking of vehicles associated with the development; **(15)** The development shall not be brought into use until a detailed noise survey and a scheme for the sound insulation between the ground and first floor have been submitted to and approved in writing by the local planning authority. The approved sound insulation scheme shall be implemented before the development is brought into use and retained as such thereafter; and **(16)** The forecourt associated with the premises shall at all times be used for car parking associated with the uses within 405 Stamfordham Road and for no other uses.

- The reasons given for the conditions are: **(3) & (4)** In the interests of the amenity of the occupiers of nearby residential properties, in accordance with the National Planning Policy Framework, saved Policy H2 of the Unitary Development Plan and Policy CS14 of the Core Strategy and Urban Core Plan; **(5)** In the interests of the amenity of the occupiers of neighbouring premises, in accordance with the National Planning Policy Framework and saved Policies EN1.1 and H2 of the Unitary Development Plan and Policy CS14 of the Core strategy and Urban Core Plan; **(6)** In the interests of the amenity of the occupiers of neighbouring premises and highway safety, in accordance with the National Planning Policy Framework and saved Policies H2 and T7.1 of the Unitary Development Plan and Policy CS14 of the Core Strategy and Urban Core Plan; **(12)** In the interests of the amenity of the surrounding area and highway safety, in accordance with the National Planning Policy Framework and saved Policies EN1.1, H2 and T7.1 of the Unitary Development Plan and Policy CS14 of the Core Strategy and Urban Core Plan; **(14)** In the interests of highway safety, in accordance with the National Planning Policy Framework and saved Policies T4.5 and T7.1 of the Unitary Development Plan and Policy CS13 of the Core Strategy and Urban Core Plan; **(15)** To prevent nuisance from noise in the interests of the occupiers of neighbouring premises, in accordance with the National Planning Policy Framework and saved Policies POL7 and H2 of the Unitary Development Plan and Policy CS14 of the Core Strategy and Urban Core Plan; and **(16)** In order to safeguard the residential amenities of the area in accordance with the National Planning Policy Framework and saved Policy H2 of the Unitary Development Plan.
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Decision

1. The appeal is dismissed insofar as it relates to the imposition of Conditions 3, 4, 5, 6, 14, 15 and 16 of planning permission Ref: 2016/1891/01/DET. However, the appeal is allowed insofar as it relates to the variation of Conditions 9 and 12. Therefore, planning permission Ref: 2016/1891/01/DET for change of use of existing ground floor only shop (Use Class A1) to proposed café/restaurant (Use Class A3) at 405 Stamfordham Road, Westerhope, Newcastle-upon-Tyne NE5 5HA, granted on 1 February 2017 by Newcastle City Council, is varied by deleting Condition 12, as attached to the previous planning permission, and substituting it with Condition 12 as set out in the attached schedule to this decision.

Application for costs

2. An application for costs was made by Mr Anthony Lang against Newcastle City Council. A counter-claim for costs was made by Newcastle City Council against Mr Anthony Lang. These applications are the subject of separate Decisions.

Procedural Matters

3. For the reasons that follow, I find that the disputed conditions are necessary and reasonable and therefore should be retained. Notwithstanding this, I find that another condition discussed in this appeal requires variation in order to ensure an acceptable development in planning terms. Therefore, I intend to issue a split decision in this case and grant planning permission in accordance with the terms of planning application Ref: 2016/18981/01/DET, subject to the conditions set out in the attached schedule.
4. I have had regard to the appellant's indication that all conditions on the original decision notice are to be considered as appealed. The reason given for doing so is to provide one single, clearly numbered schedule of conditions which would prevent the need to cross-reference between two decisions. Notwithstanding this, I confirm that have considered all of the disputed conditions in this case. Furthermore, as I have varied a condition, and therefore the planning permission

granted by the Council, for clarity and ease of reference, I have attached a full schedule of retained and revised conditions to this decision.

Background and Main Issues

5. On 5 January 2016, the Council refused an application by the appellant regarding notification of Prior Approval for the change of use of part ground floor from retail (A1) to café/restaurant (A3) at the appeal property. This decision was appealed and was subsequently allowed, subject to conditions. Following this, planning permission Ref: 2016/1891/01/DET, relating to the same property, was granted on 1 February 2017 for the change of use of the remaining ground floor from retail (A1) to café/restaurant (A3). A total of 16 conditions were attached to the approval.
6. The appellant subsequently made this appeal against the conditions attached to the planning permission which were not applied to the previously approved development stating that those conditions are unnecessary. The appellant argues that following the detailed and objective assessment of the previously approved scheme, which the appellant states is similar to that of this appeal, if such conditions were considered necessary then the Inspector would have imposed them. As a result, the appellant is seeking the removal of the disputed conditions. However, following the Council's grant of planning permission, the appellant has since indicated that all conditions should be considered as being appealed.
7. Notwithstanding this, the Council states that the disputed conditions are necessary and reasonable in order to make the proposal acceptable in terms of its impact on the property, neighbouring occupiers with regard to noise and disturbance, odour and highway safety.
8. Therefore, having regard to the above, I consider the main issue to be whether the disputed conditions are necessary, reasonable and meet the tests set out in Paragraph 204 of the National Planning Policy Framework (the Framework).

Reasons

9. The appeal property is a detached two and a half storey former dwelling which has previously been partly converted to retail use. At ground floor level the property has been extended and has operated as a convenience store with residential accommodation on the upper floors which is accessed by a side entrance on the western elevation of the property. Residential properties are to either side with commercial uses beyond. To the front is a large forecourt area which provides refuse storage and five parking spaces.
10. The appeal property is located on Stamfordham Road which is a busy main route that carries traffic from the west of Newcastle into and out of the city centre. It also connects directly with the A1 via its junction approximately half a mile to the south east of the appeal site. The property is situated between North Avenue and Highfield Road. The latter is not a through road and is primarily used by local traffic. North Avenue provides a connection from Stamfordham Road to the main district centre with is about half a mile to the south west.
11. The property has two access and egress points connecting the forecourt to Stamfordham Road. Immediately to either side of the property are driveways associated with neighbouring residential properties. To the front of the property there is a guardrail with a public footpath beyond which is a pedestrian crossing which provides a crossing point across the main road.

12. Conditions 3 and 4 relate to opening hours and delivery times respectively for the proposed café/restaurant. The Council states that specified hours were suggested to the Inspector dealing with the previously approved Prior Approval and were accepted. However, I note that this appeal proposal would expand the use to all of the ground floor and increase the number of potential covers from 48 to 68. Given the likely increase in customer activity and proximity to dwellings, I find that that the hours set out in Conditions 3 and 4 are appropriate, necessary and reasonable to manage and mitigate the impact of noise and disturbance in the evenings at the premises. Therefore, Conditions 3 and 4 should be retained.
13. Condition 5 relates to the extraction of fumes and odours and the prevention of odour penetration. The Council states that the details sought by this condition were provided by the appellant and therefore all that is required is that the works are undertaken prior to the development being brought into use. The appellant argues that the condition is unnecessary as the detail is covered in Condition 2 which deals with approved plans. Notwithstanding this, I note that the purpose of Condition 5 is to provide clarity and precision on the details and allow the appellant and/or future operators the ability to vary the extraction. Furthermore, from the evidence before me, I note that these details are not provided in the approved plan Ref: AD-14-103-RESUB Rev 2 covered by Condition 2. Therefore, I find Condition 5 to be relevant, reasonable and necessary and should be retained.
14. Condition 6 sets out the total number of covers at the proposed café/restaurant as indicated on approved plan Ref: AD-14-103-RESUB Rev 2. This is a significant increase from the 48 covers allowed as part of the Prior Approval scheme. The Council states that by not placing a restriction on the level of patronage at the property at any one time, the 68 covers based on the appellant's own submission, the potentially uncontrolled numbers of patrons any one time could lead to a significant and unacceptable adverse impact on the living conditions of neighbouring residents with regard to noise and disturbance. This would be caused by such activities as patrons and vehicles arriving and leaving the property in the evening.
15. Moreover, I find that Condition 16 provides a balance between the potential impact on the living conditions of neighbouring occupiers and a reasonable level of patronage for the café/restaurant. Accordingly, I find the condition to be necessary and reasonable and that it meets all the relevant tests within the National Planning Policy Framework (the Framework).
16. Condition 12 relates to refuse storage. The Council acknowledges that this condition as attached to the planning permission Ref: 2016/1891/01/DET is unnecessary as the proposed refuse storage area is indicated on the approved plan Ref: AD-103-RESUB Rev 2. Nonetheless, the Council has suggested revised wording of the condition which focuses on the retention of the refuse storage as submitted. Having had regard to this, I am satisfied that the revised condition meets all the tests set out in Paragraph 204 of the Framework and that it would not cause significant disadvantage to the appellant given that the refuse storage area is already proposed and would only be required to be retained. In this regard, I find that the variation rather than the removal of Condition 12 is justified, necessary and reasonable.
17. Condition 14 relates to car parking areas indicated on the approved plan Ref: AD-14-103-RESUB Rev2, as referenced in Condition 2. Condition 14 does not require anything further from the appellant other than to ensure that the parking spaces are marked out and retained as proposed. Whilst, I note that the parking spaces are indicated on the approved plan, Condition 14 goes further and seeks to ensure that the parking area and spaces are retained as proposed. I find this to be

reasonable and necessary to ensure that the forecourt operates to its full potential in terms of parking and minimises any impact on nearby highway safety. For these reasons, Condition 14 should be retained.

18. Condition 15 refers to the requirement for a detailed noise survey and a scheme for sound insulation between the ground and first floor of the appeal property. I note that no details relating to noise from the proposed use were submitted as part of the original application. Given the proximity of the first floor accommodation to the proposed café/restaurant, I find it necessary and reasonable that an appropriate assessment of the impact of noise and disturbance is provided and that any subsequent sound insulation measures are undertaken to ensure that the living conditions of neighbouring occupiers are not significantly affected.
19. The Council refers to an appeal decision (ref: APP/M4510/W/16/3164189) where assumptions were made regarding the thickness and sound insulation of existing walls and floors/ceilings without a detailed noise assessment. Whilst I acknowledge that a specific condition was not stipulated in that decision, I find that such impacts of noise and disturbance would be potentially very intrusive, particularly in the evening.
20. I note the appellant's statement that the appeal property would be marketed as a single entity. Whilst this may be so, the noise and disturbance impact would be felt by the occupier of the residential accommodation whether they had a connection to the café/restaurant or not. Therefore, I find that this would not outweigh the likely harm that would be caused to occupiers, if not appropriately checked. As a result, I find that in this case Condition 15 is entirely reasonable and necessary to ensure that noise and disturbance from the café/restaurant is assessed and appropriately managed to an acceptable level.
21. Condition 16 relates to the retention of the car parking associated with the appeal property and its use. The condition ensures that the forecourt is used, and is available, for car parking associated with the café/restaurant use at all times. I note that its purpose is to ensure that there is no loss of parking, no impingement to the access or egress of the property and therefore no detrimental impact on the highway safety of the nearby highway network. Having assessed the condition, I find that it meets the six tests set out within the Framework, and is therefore reasonable, necessary and should be retained.
22. I appreciate that there is a previously upheld appeal decision regarding the appeal property, relating to a similar proposal and use and that this should be given due weight. However, the appeal proposal differs from the previously approved scheme in that it would expand the Class A3 use to the whole ground floor and increase the number of covers from 48 to 68. In my view, this represents a significant material change which would potentially result in a number of impacts over and above those previously considered. Given that each proposal must be determined on its own merits, I find that the Council has correctly taken account of these potential impacts in its assessment. Accordingly, it has imposed conditions which are necessary and reasonable in order to ensure an acceptable development in planning terms.

Condition 9

23. Notwithstanding the above, I have taken account of the appellant's proposed amendment to Condition 9 which relates to self-closing external doors which are to remain closed when not in use. The appellant seeks to vary the condition so that it reads as per the relevant condition attached to the previously approved scheme. I find that varying the condition as suggested would increase the potential for noise

and disturbance to be experienced by neighbouring occupiers when the external doors are open. Notwithstanding this, it is neither reasonable nor enforceable to insist by condition that self-closing doors should be kept closed at all times when not in use. Therefore, I am satisfied that Condition 9 should be amended to reflect the wording as suggested by the appellant.

Conditions

24. I have had regard to all of the conditions imposed disputed in relation to Planning Permission Ref: 2016/1891/01/DET. As I have issued a split decision, for clarity and ease of reference I have set out a complete schedule of all of the retained conditions attached to the permission issued by the Council on 1 February 2017 and the variations to Conditions 9 and 12 resulting from my decision.
25. The reasons for the conditions imposed are as described in relation to planning permission Ref: 2016/1891/01/DET. However, I have reproduced them here for ease of reference and clarity.
26. In addition to the standard conditions relating to time (1) and approved plans (2), conditions relating to opening hours (3) and delivery times (4) are imposed in the interests of the living conditions of neighbouring occupiers. Condition 5 relating to the extraction of fumes and odours is imposed in the interests of the living conditions of neighbouring occupiers and Condition 6 regarding the potential maximum number of covers is imposed in the interests of the living conditions of neighbouring occupiers and highway safety.
27. Conditions relating to non-openable windows (7), the hours of operation relating to bottle containers and storage (8), self-closing doors (9), the noise level of external plant (10) and the extraction of fumes and odours to be accommodated within the existing chimney stack and building (11) are necessary and reasonable in the interests of the living conditions of neighbouring occupiers. Furthermore, in addition to living conditions, Conditions 12 and 13 relating to refuse bin storage are imposed in the interests of highway safety. Conditions 14 and 16 are imposed for highway safety reasons and for residential amenity. Condition 15 is imposed in the interests of the living conditions of neighbouring occupiers.

Conclusion

28. Consequently, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed with regard to Conditions 3, 4, 5, 6, 14, 15 and 16 and allowed with regard to the amendments made to Conditions 9 and 12. I find that each condition as retained or varied is intrinsically linked to each other, necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. Therefore, they are in accordance with the tests set out in the Framework, Policies CS13, CS14 and CS15 of the Core Strategy and Urban Core Plan and saved Policies EN1.1, H2, T4.5, T7.1 and POL7 of the Unitary Development Plan.
29. This decision constitutes a variation to the original grant of planning permission Ref: 2016/18981/01/DET issued on 1 February 2017. Therefore, planning permission is granted for the proposal as described, in accordance with the terms of planning application Ref: 2016/1891/01/DET, and subject to the conditions set out in the attached schedule to this decision letter.

Andrew McCormack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates shall begin not later than the expiration of three years beginning with the date of this decision.
- 2) The development to which this permission relates shall be carried out in accordance with the approved plan(s) referenced: AD-14-103-RESUB Rev 2.
- 3) The premises shall not be open for customers outside the following hours: 0800-2230 Mondays – Thursdays; 0800-2300 Fridays and Saturdays; 1700-2230 Sundays and Bank or Public Holidays.
- 4) There shall be no deliveries to or from the site outside the hours of 0800-2230 Mondays to Thursdays, 0800-2300 Fridays and Saturdays; or 1700-2230 Sundays, Bank or Public Holidays.
- 5) The scheme for the extraction of fumes and odours and for the prevention of odour penetration shall be carried out in accordance with the approved: Baffle Filter canopy, Acticel Carbon Filter unit, Fan with silencer, 'Four Stage Filtration off Canopy above Cooking Range/Hob/Ovens/Spits Griddle', Combined Electrostatic Precipitator and Precipitator with UV-C, ON 100 Odour neutraliser and Visqueen vapour barrier. The approved scheme shall be implemented before the development is brought into use and retained as such thereafter. All equipment installed as part of the scheme shall be operated and maintained in accordance with the manufacturer's instructions
- 6) The number of covers in the proposed café/restaurant shall not exceed 68 at any time.
- 7) There shall be no openable windows in any part of the building used for the permitted A3 use.
- 8) No glass material or bottles shall be deposited in any skip, bin or other container which is located outside of the building, between the hours of 22:30 and 08:00 and any such skip, bin or container shall not be removed from the premises between those hours. Details of internal bottle storage to be provided on the premises shall be submitted to and approved in writing by the local planning authority. Thereafter, this scheme shall be implemented in accordance with the approved details and shall be retained at all times.
- 9) The front external door to the permitted A3 use shall be self-closing.
- 10) At the site boundary noise levels generated by the external plant shall not exceed more than 5dB(A) above the background noise level.
- 11) Development shall not commence until plans to demonstrate the extraction of fumes and odours and for the prevention of odour penetration through the building can be accommodated within the existing chimney stack and building. After which, the approved scheme shall be implemented before the development is brought into use and retained as such thereafter.
- 12) The development should not be brought into use until the approved refuse storage area has been formed in accordance with the approved plans. The approved refuse storage area shall thereafter be retained for the storage of reuse at all times.
- 13) No external refuse or refuse container shall be stored outside of the approved refuse storage area except on the day of refuse collection.
- 14) The development shall not be brought into use until the car parking area indicated on the approved plans, including any disabled car parking spaces

contained therein, has been hard surfaced, sealed and marked out in parking bays. Thereafter, the car parking area shall be retained in accordance with the approved plans and shall not be used for any other purpose other than the parking of vehicles associated with the development.

- 15) The development shall not be brought into use until a detailed noise survey and a scheme for the sound insulation between the ground and first floor have been submitted to and approved in writing by the local planning authority. The approved sound insulation scheme shall be implemented before the development is brought into use and retained as such thereafter.
- 16) The forecourt associated with the premises shall at all times be used for car parking associated with the uses within 405 Stamfordham Road and for no other uses.

END OF SCHEDULE