



Appeal Decision

Site visit made on 18 July 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 27 July 2017

Appeal Ref: APP/M4510/W/17/3174555

68 Saint 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: 2017/0101/01/DET, dated 18 January 2017, was refused by notice dated 24 March 2017.
 - The development proposed is the change of use from residential (C3) to cafe (A3).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

3. The appeal site is a three-storey end of terrace property. The property has been sub-divided into three separate units, with the proposal relating to the ground floor unit. The front of the property consists of a paved forecourt area, with space for the parking of up to four vehicles, and a footpath leading to the front door. The rear of the property has a modest sized yard, with a double garage, leading onto a lane which is mainly used for access to the garages.
4. The site is located in a mixed part of Jesmond, with a Tesco Express and parade of shops located to the south of the site and further commercial units on Acord Road. In addition, the Jesmond Methodist Church and Café 1901 are located directly opposite the site. Jesmond library is also located a short distance from the site, close to the church and Café 1901. The remainder of the terrace, on the northern side where the appeal site is located, is primarily residential. This northern side of the street is characterised by substantial three-storey terraces, with low boundary walls and mature hedges, with the front gardens being laid mainly to lawn.
5. The proposal would be directly adjacent to 70 Saint Georges Terrace, which consists of three flats, spread over each of the three floors. Furthermore, the existing first and second floor flats within the appeal site would be directly above the proposal.

6. I am mindful of the fact that the site has been the subject of two previous refusals for planning permission¹ and a subsequent dismissal at appeal². As such, I note that the appellant has aimed to address the reasons for refusal. The proposed front of the site has been redesigned and the rear extension removed, leaving amenity space for the residents of the flats above the proposal. In relation to the front of the site, the appellant contends that through the use of raised sleeper beds, rockery surrounds and a mix of enclosures including guard rails, piers and trellis, customers will be unable to gather outside the entrance to the property.
7. A revised noise assessment³ was submitted with the 2017 planning application, with the proposed amendments to the scheme being taken into consideration. The assessment identified that a sound installation scheme would be required to protect the amenity of residents in adjacent properties due to noise generated in both the kitchen and dining area. In addition, the use of anti-vibration mounts for both the extraction hood and ducting would also be necessary. There is no substantive evidence before me which leads me to consider that such measures would not be effective.
8. It is further acknowledged that the assessment of external customer noise would be below both the existing measured noise level and also the 'no observed adverse effect level'. However, noise associated with any additional traffic flows, car doors being closed or conversations and interactions has not been modelled or included within the revised assessment.
9. The appellant intends that the path outside the front of the site will be designated as a non-smoking area, to be enforced by management. However, on a day to day basis this would be very difficult to control and enforce. Furthermore, the appellant would have no control over customers who may congregate just outside the premises on the pavement areas in front of and adjacent to the site.
10. It is apparent that the proposal would be located very close to existing residential accommodation. It is however accepted that due to the parade of shops and church and café located opposite the site, the noise environment is unlikely to be particularly quiet during the day. This existing level of noise and potential for disturbance is likely to be noticeable to the occupiers of the properties adjoining and above the appeal site.
11. Nonetheless, from observations made during the site visit it is evident that the terrace in which the appeal site is located is physically separate from the majority of the commercial uses, due to the location of the adjoining streets. Furthermore, the majority of the commercial units in proximity to the appeal site are not open late into the evening. The closing time of these commercial units also corresponds with the point at which traffic along the adjacent road network will begin to reduce and, as a consequence, background levels of noise in the wider environment will become less. Whilst the Tesco Express may be open until midnight Monday to Friday, the nature of this type of store is different to that of the proposal as the average customer will be likely to pop in for a specific item of shopping. Visits later in the evening are therefore likely to be few and of a short duration only.

¹ Council references 2014/1721/01/DET and 2016/0067/01/DET

² Appeal reference APP/M4510/W/16/3154651

³ Noise Assessment January 2017, Wardell Armstrong

12. The proposed amendment to the front of the appeal site may well reduce the level of noise and disturbance generated by customers once on the site. However, noise will still be generated as a result of customers coming and going to the appeal property whether on foot or in a motor vehicle. Consequently, conversations held outside the premises, the slamming of car doors and the turning over of car engines and vehicles manoeuvring to and from the street will be experienced.
13. During the day time such noise levels may not result in an impact on the living conditions of the adjoining occupiers. However, later in the evening or during weekends and bank holidays, vehicle noise from the surrounding road network and commercial units will be reduced. Therefore, the background noise will be lower than in the daytime. It is at these times, later in the evening and after 1900 in particular, that residents living in proximity of the site might reasonably expect a reasonable degree of peace and quiet as they watch television, get younger or elderly family members ready for bed or otherwise wish to relax within their homes.
14. It is noted that the appellant would be willing to accept a planning condition restricting the opening hours of the proposal to 0830 to 2000 seven days a week, including Bank Holidays. However, as a consequence of the reduced background noise levels during the evening and the potential noise and disturbance generated by customers arriving and leaving the premises, such a condition would not overcome the identified concerns.
15. Accordingly, despite the amendments made, no substantive evidence has been submitted which persuades me that there is reasonable certainty that the impact of the noise and disturbance as a result of customers arriving and leaving, and potentially congregating outside on the pavement, would not adversely affect the living conditions currently enjoyed by the neighbouring residents.
16. The appellant has drawn my attention to the Fat Hippo Restaurant, located on the corner of Thornleigh Road and Saint Georges Terrace, which is also on the end of a terrace. However, I have little information relating to the particular circumstances of this development and as such, a comparison is of limited relevance in this instance. Accordingly, I have considered the appeal before me on its individual merits.
17. The relatively sustainable location of the proposal and potential for local employment opportunities are acknowledged. However, these benefits do not overcome the identified harmful effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. The proposal is therefore contrary to Policies CS14 and CS15 of Planning for the Future: Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 and Policies EN1.1 and H2 of the Newcastle City Council Unitary Development Plan 1998. Taken together these policies, amongst other things, seek to prevent a negative impact on residential amenity.
18. The proposal would also run contrary to the National Planning Policy Framework's core planning principle of seeking to secure a good standard of amenity for all existing occupants of land and buildings.

Conclusion

19. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Helen Cassini

INSPECTOR