
Appeal Decision

Site visit made on 24 February 2020

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2020

Appeal Ref: APP/M4510/W/19/3241998

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 refusal to grant planning permission.
 - The appeal is made by Mr Anthony Lang against the decision of Newcastle City Council.
 - The application Ref 2019/1280/01/DET, dated 10 September 2019 , was refused by notice dated 20 November 2019.
 - The development proposed is change of use of existing ground floor area (currently Use Class A1) to proposed café/restaurant (Use Class A3) with installation of extraction duct and filtration system to side (along flat roof and up the rear elevation) to terminate 1 metre above eaves with extended parapet wall to front to screen duct .
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by both parties. These applications are the subject of separate Decisions.

Procedural Matters

3. The description of the development in the banner heading is taken from the planning application form. The Council confirm that they do not object to the principle of the development. The use has been allowed at appeal¹ and allowed within a subsequent planning application² with conditions varied at appeal³. The refusal reasons which are the subject of this appeal relate solely to the position of the extraction system, increase in height of the parapet wall to the existing garage and the extension of opening hours which were previously restricted by condition. I have considered the appeal on this basis.
4. As part of final comments submission, the appellant has submitted a drawing with an alternative proposal for the design of the flue. The Procedural Guide⁴ sets out in paragraph M.2.1 that, 'If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'. The amendments notably alter the form of the development. If I were to determine the appeal based on the proposed amendments it is possible that the interests

¹ Appeal reference APP/M4510/W/16/3143602 (prior approval application ref 15/00591/NCA)

² Application ref 2016/1891/01/DET

³ Appeal ref APP/M4510/W/17/3168748

⁴ Procedural Guide: Planning appeals – England, March 2020

of parties who might wish to comment would be prejudiced. I have therefore determined the appeal based on the original submission.

Main Issues

5. The main issues are the effect of the development on:

- the character and appearance of the area; and
- the living conditions of the neighbouring properties with regard to noise and disturbance.

Reasons

Character and appearance

6. The appeal property is a stone built detached two and a half storey former dwelling which has been partly converted to retail use. It 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. At ground floor level the property has been extended and has latterly operated as a bathroom shop but is presently vacant. There is 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, to the rear and opposite the site with commercial uses beyond. To the front is a forecourt area which provides parking spaces for the site.
7. The appeal property and its immediate neighbours on either side occupy a prominent position on the road frontage. These substantial stone-built gabled structures with chimneys are an attractive feature of the street. The gable end of the appeal building is particularly prominent because the adjacent semi-detached dwellings are set further back. The proposed extraction flue would project through the attached garage roof, which the drawings indicate would become a flat roof, and run horizontally in parallel with the side of the stone gable, above the roof of the garage. The flue would extend around the edge of the building where it would run vertically up the rear elevation to approximately 1 metre above eaves level.
8. The horizontal and vertical elements of the extraction flue, although powder-coated black and partly on the rear elevation, would be visible from Stamfordham Road and from adjacent residential properties. The extraction flue's commercial scale would appear as a prominent and intrusive addition to the building. Its design and siting would diminish the attractive appearance of the building's stone gable elevation and would be unduly prominent when viewed from the adjacent residential properties and within the street scene. Overall, I find that the extraction flue would be at odds with the character and appearance of the appeal site, the street scene and the adjacent domestic properties.
9. The attached side garage has a small parapet above the existing garage door. The garage is a brick extension with roller shutter door set on the same building line as the stone front elevation of the main building. The ground floor shop front is a forward extension with large deep fascia. The shop front and fascia dominate the front ground floor elevation. The raising of the parapet in the way proposed would result in very limited difference to the

overall appearance of the site frontage, particularly with appropriate conditions to ensure suitable materials and coping detail.

10. Although this higher parapet would enclose the proposed flue when looking directly at the site from across the road. It would not overcome my concern about the appearance of the flue on the approach to the site or from adjacent residential properties.
11. I acknowledge that the appeal building is not listed and is not in a conservation area. It nevertheless contributes to the street scene and the positive features that form part of its character and appearance would be undermined by the location and design of the flue. The development would not add to the overall quality of the area, respect the character of the site or its surroundings.
12. Consequently, I find that the proposed development would detract from the character and appearance of the area. This would conflict with Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle-upon-Tyne, 2015, (CS), which seeks development that contributes to good place making through the delivery of high quality and sustainable design. It would further conflict with the requirement to integrate development into its setting with regard to the scale and pattern of surrounding buildings and their materials and design characteristics, as set out in saved Policy EN1.1 of the Newcastle upon Tyne Unitary Development Plan, 1998 (UDP). These policies are in broad compliance with the Framework in seeking high standards of design.

Living conditions

13. As I have set out above the previous history on this site has established that the use of the ground floor as a café/ restaurant (Class C3) subject to appropriate conditions has been supported by the Council and at appeal.
14. However, previous approvals restricted opening hours. Planning permission 2016/1891/01/DET and the subsequent appeal decision⁵ restricted opening hours until 2230 (2300 on a Fridays and Saturdays) based on the number of covers rising from 48 to 68. The current appeal proposes a maximum of 75 covers and seeks to extend opening hours to midnight every night with earlier opening on a Sunday (1100 instead of 1700).
15. As has been highlighted on a number of occasions in the previous decisions, although the appeal site is part of a wider commercial area on a relatively busy road with an established bus route that operates until later in the evening, the immediate neighbouring properties are in residential occupation. The potentially uncontrolled numbers of patrons at 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 when surrounding activity and noise levels would be reduced. I accept that there is other retail development in the wider area however the types of noise generated by shop customers tends to be spread throughout the day and is very different to those visiting a restaurant and engaged in social activities. I consider that the extension of the opening hours

⁵ Appeal ref APP/M4510/W/17/3168748

in the evening as proposed would be unduly intrusive to the neighbouring residential properties.

16. During the day when the traffic levels are higher and the majority of commercial uses close to the site are open the harm to immediate neighbours may be less pronounced. However, even if I were to consider the earlier Sunday opening to be acceptable, the proposed extension of the opening hours in the evening is unacceptable.
17. Therefore, I conclude that the development would harm the living conditions of the neighbouring properties with regard to noise and disturbance. This would conflict with saved Policy H2 of the UDP, and Policy CS14 of the CS, which seek to protect residential amenity. These policies reflect the Framework in this regard.

Other Matters

18. I note that the drawings show the location of bin storage within the front forecourt. Whereas in previous schemes the bin storage has been provided out of sight of the frontage. I also note the neighbour objections to the flue in terms of odour. Given my conclusions in relation to the main issues I have not found it necessary to consider these matters further.
19. I appreciate that there would be some economic benefits associated with the use of the premises as a restaurant with extended hours. I have limited evidence before me that an occupier cannot be found for the restaurant that could operate within the limits of the conditions previously applied.

Conclusions

20. For the reasons given above, the appeal is dismissed.

Diane Cragg

INSPECTOR