



Appeal Decision

Site visit made on 4 August 2020

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/M4320/W/20/3249094

Churchtown Village Supplies, 78 Botanic Road, Southport, Sefton PR9 7NE

- 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 James Birchall against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/01072, dated 6 June 2019, was refused by notice dated 21 February 2020.
 - The development proposed is described as 'change of use of existing A1 use class property to mixed use A1-A4 use class. Proposed alterations to existing rear single storey lean-to extension'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal property is a Grade II listed building. The plans and drawings show internal works to facilitate the proposed change of use, and I observed during my site visit that some internal alterations had already been carried out. In this regard, I note the Council's concerns in relation to the loss of plan form and historic fabric. However, these internal works do not constitute an act of development and are therefore beyond the scope of this appeal. Furthermore, I understand that an accompanying application for Listed Building Consent has been made for these works, but this matter is not before me.
3. A third party requested that I view the appeal site from their property at 76A Botanic Road, but they were not at home when I attended at the pre-arranged time. Nevertheless, during my visit I was able to see everything I needed to determine the appeal and the third party was subsequently informed of this.
4. In the appeal statement the appellant has offered an alternative description of development which they consider is a more accurate reflection of what is proposed. However, the appeal process should not be used to evolve a scheme and it is therefore important that the premise upon which the Council considered the proposal, and on which third parties' views have been sought, is essentially the same as what is considered by the Inspector at appeal¹. I have therefore considered the appeal on the basis of the appellant's original description of development.
5. On 1 September 2020 the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town

¹ Annexe M of the *Procedural Guide Planning Appeals – England*.

and Country Planning (Use Classes) Order 1987. The Regulations rationalise the system of Use Classes and in doing so have established a new broad 'commercial, business and service' use class (Class E). The parties were invited to comment on the implications of this for the appeal but chose not to.

6. The implications in this case are limited, in essence the new regulations incorporate retail (formerly Class A1) and other specified commercial uses into the new Class E use, while drinking establishments (formerly Class A4) now fall outside of the Use Classes Order entirely. However, as the proposal is for a mixed use, in planning terms the resulting business use would be sui generis, that is to say a use of its own kind. Therefore, I have considered the appeal on this basis.

Main Issue

7. The main issue is the effect of the proposed development on the living conditions of neighbouring residents, with regard to noise and disturbance.

Reasons

8. The appeal relates to a two storey mid-terrace property dating from the early-to-mid 19th century along with its rear yard area at 78 Botanic Road, Southport. The property has a double fronted traditional shopfront with recessed entrance door flanked by large display windows, reflecting its use as a retail unit.
9. The site is located within the Churchtown Local Centre as defined in the Local Plan for Sefton (adopted 2017) (the Local Plan) where the surrounding area comprises a mix of commercial and residential uses including shops, cafes, restaurants, and drinking establishments, with upper floors predominantly in residential use. It strikes me that the general character of the surrounding area is one of a moderately busy village centre with a tight urban grain reflecting its historical development and its mix of residential and commercial uses.
10. The street facing aspect of the appeal property is adjoined at the ground floor by retail units to either side. However, the appeal property's rear yard is flanked by residential gardens lending a village like and sedate atmosphere to this aspect, in marked contrast to the commercial character of the street frontage. At the first floor, the appeal property is flanked by residential units and part of its ground floor also directly adjoins a habitable space in the neighbouring dwelling. For these reasons, the immediate environs of the appeal property are more strongly residential in character in contrast to other parts of the local centre and therefore, in my judgement, are clearly more sensitive to changes in the noise environment than the wider area.
11. The proposal would see the introduction of a mixed use of part wine retail and part wine bar. Internally, the space would comprise a sales counter, display shelving and tables and chairs set out for customers. The nature of the proposed use is such that gatherings of people would give rise to noise generating activities such as talking, raised voices and, laughter; coupled with the movement of chairs, glasses and crockery. Such noise levels are likely to be exacerbated by some customers being in high spirits which could lead to levels of conversation being increasingly audible through either a number of voices being raised at any one time or louder individual voices.

12. The appellant's Environmental Noise Report² identifies that noise mitigation measures will be required to minimise the transfer of noise generated internally by the proposed use. However, the assessment was limited to the consideration of noise transfer through the separating walls only and does not consider the potential for noise transfer via the front or rear elevations of the building. The plans and supporting information suggest the installation of acoustic double glazing to the rear extension but there is no mention of this in the Noise Assessment and no technical specification is provided. While an amended plan shows this part of the building is to be used as a service area it is still likely to give rise to noise generating activities through the movement of used wine bottles and glasses or other activities associated with servicing the business and which could take place beyond the proposed opening hours.
13. Accordingly, I find the Noise Assessment and its subsequent recommendations to be deficient as it does not fully consider all potential routes of sound transfer throughout the building. It does not therefore sufficiently demonstrate that environmental risks have been fully evaluated and appropriate measures identified to minimise the impact of noise to a suitable level.
14. Furthermore, there would also be noise and disturbance to neighbouring residential occupiers through the general comings and goings of customers via the opening and closing of the front entrance door and cars/taxis arriving to drop off and collect customers throughout the evening. Given the close proximity of neighbouring residential properties, I find this would generate an unacceptable level of noise and disturbance to neighbouring occupiers late into the evening when they might reasonably expect lower levels of noise.
15. In reaching this view, I am mindful that diagonally opposite the site is an existing public house, The Bold Arms Hotel, and that further to the west across Cambridge Road is The Hesketh Arms Public House, along with their respective outdoor seating areas. These establishments are likely to generate a degree of existing noise and disturbance in the area, but they do not provide a justification for allowing a further noisy or disruptive use that would bring noise and disruptive activities closer to existing residential uses.
16. I also note that a number of neighbouring properties have single glazed windows owing to the fact that many are listed buildings and located in a conservation area. For these properties there is a greater potential for noise transfer through historic windows and therefore the occupiers of these properties would be particularly sensitive to increased levels of external noise, further adding to my concerns.
17. It is suggested that the number of customers within the premises at any one time could be restricted by condition and that the wine bar element of the use could close earlier at 10pm, with this also being secured by condition. However, even with a restricted number of customers the nature of the use is such that it would be particularly harmful in the evening hours, regardless of an imposed 10pm or 11pm closing time. In any case, the suggested conditions, would not overcome the identified deficiencies of the Noise Assessment and therefore do not overcome the harm I have identified.
18. Consequently, for these reasons I conclude that the proposal would have a significant harmful effect on the living conditions of neighbouring residents, with

² By Soundtesting Acoustic Consultancy & Air Leakage Specialists dated 31 May 2019

regard to noise and disturbance. It would therefore conflict with Policies EQ4 and EQ10 of the Local Plan which together require development proposals to demonstrate that the impact of noise can be reduced to an acceptable level so not to cause harm to local amenity. In doing so, it would also conflict with the policies of the National Planning Policy Framework which prevent development from contributing to unacceptable levels of noise pollution and seek to secure a high standard of amenity for existing and future users. In arriving at this view, I am mindful of the appellant's references to the Noise Policy Statement for England and its aims in respect of the effective management and control of environmental, neighbour and neighbourhood noise.

Other Matters

19. The appeal property is a Grade II listed building and is located within the Churchtown Village Conservation Area (the CVCA). While the effects of the proposal on the listed building and conservation area are not in dispute, I am mindful of my statutory duties³ in this regard.
20. From the evidence before me, including the List Description, the submitted evidence and my own observations, I consider the significance of the listed building to be largely derived from its age, form and fabric. Its significance is also evident in its group value with the remainder of the street which, owing to the traditional appearance of its constituent buildings, makes a significant positive contribution to the townscape along Botanic Road. The significance of the CVCA is derived in part by its tight urban grain and mix of traditional historic buildings which are remnant of its historical village character as a former self-contained settlement.
21. The proposal includes a replacement rear extension with bi-folding doors and flat roof with glazed lantern and weatherboard cladding to its elevations. I note that the LPA's Conservation Officer has not raised any concern with this element of the proposal and given its discreet position to the rear taken together with its design, scale and the general character of the rear aspect of the block where accretions and alterations are far from uncommon, I see no reason to take a different view. Consequently, I am satisfied that the proposed development would preserve the listed building and its features of special architectural and historic interest. For these reasons too, the proposal would clearly also preserve the character and appearance of the CVCA. However, absence of harm in these respects is not a positive benefit of the appeal proposal and thus only has a neutral effect on the overall planning balance.
22. I acknowledge the support for the proposal as expressed by those who have signed a petition in favour of the development and that pre-application advice was initially positive in principle. However, these matters do not override the harm I have found in this case and do not therefore justify a decision other than in accordance with the development plan.

Conclusion

23. For the reasons I have set out, the appeal is dismissed.

Jeff Tweddle

INSPECTOR

³ Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990