



Appeal Decision

Site visit made on 17 November 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2020

Appeal Ref: APP/M4510/W/20/3257005

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-upon-Tyne City Council.
 - The application Ref 2020/0459/01/DET, dated 14 April 2020, was refused by notice dated 24 July 2020.
 - The development proposed is change of use of existing ground floor area (currently Use Class A1) to proposed café/restaurant (Use Class A3) with the installation of extraction duct and filtration system to the rear to terminate 1 metre above eaves.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by both main parties against one another. These applications are the subject of separate Decisions.

Procedural Matters

3. The description of development used in the banner heading above has been taken from the planning application form. However, in the interests of clarity I have removed superfluous text so that it aligns with the description used in the decision notice.
4. Since the appeal was lodged there have been amendments to the Town and Country Planning (Use Classes) Order (1987). These changes bring both the existing retail use of the appeal site and the proposed café/ restaurant use into the same use classification, namely Commercial, Business and Service (Class E). Transitional arrangements mean that this appeal must be decided with reference to the current use classes because the application was submitted before 1 September 2020. I have sought the views of the main parties on these changes. I find in this instance this revision is a material consideration. The appeal proceeds on this basis.
5. The appellant has submitted a revised drawing with an alternative proposal for the external appearance of the extraction duct and filtration system. If I were to determine the appeal based on the proposed amendments, it is possible that the interests of parties who might wish to comment would be prejudiced. I have therefore determined the appeal based on the refused plans.

Main Issues

6. The main issues are:

- the effect of the proposed extraction duct and filtration system on the character and appearance of the host building, with particular regard to scale and positioning; and
- the effect of the appeal proposal on the living conditions of neighbouring residents, with particular regard to outlook and enjoyment of external private amenity space and whether or not there would be potential for noise and disturbance.

Reasons

Character and appearance

7. The appeal site is located on a busy main route that carries traffic from the west of Newcastle into and out of the city centre. It comprises a substantial two and a half storey, detached, stone built vacant retail unit on the ground floor with a residential flat above. Its scale, design and appearance reflect the blend of residential and commercial properties in this mixed use area.
8. The proposed extraction duct and filtration system would be siting externally to the rear of the building. The horizontal component would be located on an existing first floor rooftop balcony above the proposed kitchen area, behind a solid parapet wall. The vertical flue section would extend above the height of this enclosure to a point above eaves level. However, it would be located to one side, near the juncture of the rear elevation and one of the gable ends. It would not unduly obscure any notable features of the host building.
9. In view of its scale relative to the building and its positioning, this external equipment would not unduly dominate the rear elevation of this mixed use building from the street level views and from the surrounding houses.
10. Furthermore, it is proposed that the external equipment would be colour coated. A suitably recessive colour could necessarily be secured by way of an enforceable planning condition.
11. For these reasons, the proposed extraction duct and filtration system would not cause harm to the character and appearance of the host building, with particular regard to scale and positioning.
12. Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (adopted March 2015) (the Core Strategy) requires development to respond positively to character. Policy DM20 of the Newcastle upon Tyne Development and Allocations Plan 2015 – 2030 (adopted June 2020) (the DAP) requires development to deliver high quality and sustainable design. Materials and colours should be appropriate to the character of the area.
13. In the absence of harm, there is no conflict with these policies. This weighs in favour of the appeal proposal.

Living conditions

14. The proposed opening hours and number of patrons are relatively modest in comparison to those restrictions which have been previously identified through the course of this site's planning history. The potential for harm to the living conditions of neighbouring residents as a consequence of even a small increase in these cannot be ruled out given the proximity to existing residential properties.
15. However, this must be balanced with the recent amendment to the Town and Country Planning Use Classes Order 1987 (the UCO) set out in the Procedural Matters section of this decision. This change to the UCO would not place any such restrictions on any subsequent change of use. This is material to this appeal. Consequently, it would be unreasonable to dismiss the modest changes that the appellant seeks in these regards.
16. In terms of the extraction duct and filtration system, I have already concluded that it would not be harmful to character and appearance. For the same reasons, I do not find that the appeal proposal would adversely affect the outlook of those neighbouring residents who would enjoy distant or oblique views of it.
17. However, the proposed positioning of both the horizontal and vertical sections of this equipment would extend across the private first floor external amenity space which serves the existing adjoining first floor flat. By intruding upon this amenity space, this external equipment would fall within close proximity and in view from rear windows serving that flat. Furthermore, its very presence would restrict the free and reasonable use of that space. This particular arrangement would be prejudicial to the living conditions of existing and future occupiers of that flat.
18. It has been advanced that the ground and upper floor units fall within the same ownership. The appellant has indicated that they would be receptive to a condition that tied the occupancy of the two units. However, that does not justify or resolve what would amount to a very compromised and unsatisfactory arrangement which would be harmful to the living conditions of any occupier of that unit, regardless of occupancy type. There are no appropriate means by which I could secure appropriate mitigation through the course of this appeal to satisfactorily remedy this situation.
19. For these reasons, I find that there is a material consideration which would weigh in favour of the proposed opening hours and customer numbers sought by the appellant. Nonetheless, the appeal proposal would pose a significant level of harm to the living conditions of the occupiers of the adjoining flat with particular regard to outlook and enjoyment of their external private amenity space.
20. Policy CS14 of the Core Strategy seeks to prevent negative impacts on residential amenity. Policy DM23 of the DAP seeks a high quality environment and a good standard of residential amenity. Development that has an unacceptable adverse impact on residential amenity will not be allowed. It also requires that proposals maintain a good standard of outlook and ensure that noise and disturbance will not have an unacceptable adverse impact on residential amenity.

21. For the reasons given, there is conflict with these policies. The nature and level of the harm identified, and the subsequent policy conflict weighs significantly against the appeal proposal.

Other Matters

22. The appellant has advanced that the proposed scheme would secure the occupancy of a vacant unit which has been problematic and would have regeneration and economic benefits. However, although the unit appeared vacant at the time of my site inspection, insufficient evidence has been presented to substantiate these claims.
23. The appellant has also advanced that the proposed extraction duct and filtration system would not be dissimilar to other structures that benefit from permitted development rights. However, as this equipment falls within the scope of planning control, its effects must be assessed. In this case, I have found harm to the living conditions of the occupiers of the adjoining flat that cannot be adequately mitigated through the course of this appeal.
24. The evidence before me confirms that various alternative options for the siting of the required extraction duct and filtration system have been pursued by the appellant. However, the evidence relating to an internal option does not adequately confirm that an internal solution is impossible.

Conclusion

25. I have found that the proposed extraction duct and filtration system would not be harmful to the character and appearance of the host dwelling, nor to the living conditions of the occupants of the majority of surrounding dwellings. These weigh in favour of the appeal proposal.
26. However, I have found the potential for harm to the living conditions of neighbouring residents as a consequence of the proposed hours of opening and levels of customer activity. This would conflict with the development plan. However, that conflict would be out-weighed by the implications of changes to the UCO.
27. Notwithstanding this, I have also found significant harm to the living conditions of the occupiers of the adjoining flat as a consequence of the proposed siting of the extraction duct and filtration system. That harm is of a nature and degree that is not out-weighed by those matters which weigh in favour of the appeal proposal.
28. For the reasons given above, the appeal should be dismissed.

C Dillon

PLANNING INSPECTOR