



Appeal Decision

Site Visit made on 24 May 2021

by J Hunter BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2021

Appeal Ref: APP/M4510/W/21/3268472

72-74 Warwick Street, Newcastle Upon Tyne NE6 5AR

- 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 Waheed Hassan against the decision of Newcastle Upon Tyne City Council.
 - The application Ref 2020/1184/01/DET dated 10 August 2020, was refused by notice dated 16 November 2020.
 - The development proposed is described as change of use of part of ground floor from retail (Class E) to hot food take-away (Sui Generis), installation of extract flue to rear and alterations to side and rear elevations including installation of roller shutters.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the appeal form. It matches that given in the Council's Decision Notice and it is more precise.

Main Issues

3. The main issues are i) the effect of the development on the living conditions of neighbouring residents with regard to noise and disturbance and ii) the effect of the proposal on highway safety.

Reasons

Living Conditions

4. The appeal site is a two storey end of terrace property which lies on the corner of Warwick Street and Stratford Road in a densely developed residential location. There is residential accommodation at first floor with opening windows overlooking the lane which runs to the rear of the appeal building. The front portion of the ground floor operates as a convenience store.
5. The appeal proposal would see the conversion of part of the rear section of the ground floor shop area into a hot food takeaway. The new shop would have its frontage on the gable end of the terrace facing onto Warwick Street whilst the existing convenience store would maintain its existing entrance at the front, facing onto Stratford Road.
6. Hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of noise and odour caused by cooking inside the premises and noise and general disturbance caused by customers and delivery

vehicles outside the premises, particularly when these take place late into the evening and night. The proximity and density of residential properties close to the appeal site creates a sensitive relationship and would mean that occupiers are likely to experience such disturbance and subsequent material harm to their living conditions.

7. Noise generated within the property is likely to be experienced by occupiers of the flat above the property and those living closest to the site at nos. 76 and 78 Warwick Street. Furthermore, noise and general disturbance generated by the comings and goings of customers and potentially delivery drivers late into the night would be experienced by occupiers of other nearby residential properties in an area which has no other such uses in the immediate vicinity.
8. There is no evidence to suggest that any such noise or odours would be adequately attenuated and, given the sensitive relationship between the closest properties, it would not be reasonable to leave the acceptability of any such measures to be approved by way of a planning condition.
9. I acknowledge the appellant's submissions in relation to other approved Hot Food Takeaways in the wider area and the argument that there are modern noise and odour mitigations that have been deemed acceptable. Nonetheless, I have considered this proposal on its own merits and based on the evidence before me I am not satisfied that the proposal would not cause significant harm to the living conditions of neighbouring residents by way of noise and odour.
10. Consequently, the proposal would fail to accord with the requirements of Policies CS14 and CS15 of the Newcastle Gateshead Core Strategy and Urban Core Plan 2015, Policies DM20, DM23 and DM24 of the Development and Allocations Plan and Policies 2020 and HFT4, HFT6 and HFT7 of the Council's Hot Food Takeaway Supplementary Planning Document (SPD). Collectively these policies aim to ensure, amongst other things, that proposals are appropriately designed and located whilst protecting the health, wellbeing and residential amenity of users and neighbours.

Highway Safety

11. I saw during my site visit that the site is located in a busy, densely development suburb where there is a significant amount of through traffic and on-street parking. The lanes to the rear of the terraces within the immediate vicinity of the appeal building are closed off thus restricting access for parking and through traffic.
12. Whilst I appreciate that my site visit represents only a snap shot in time, I noted that there were opportunities to park in the surrounding streets, close to the site although the presence of parking restrictions directly outside of the building and around the nearby junctions meant that places to pull in were severely restricted.
13. Notwithstanding the above, given the density of the housing close to the site, many customers would be visiting the site on foot, indeed I observed during my site visit that most people visiting the adjacent shop did so on foot. Furthermore, whilst there are parking restrictions immediately outside the shop, on street parking, although busy, is available on the surrounding streets and I have been presented with limited evidence about what harm to users of

the highway, either pedestrian or vehicle, would arise from short stay on street parking in the vicinity of the appeal site.

14. I note the Council's objection in relation to the refuse storage and I saw on site that a large commercial bin was positioned on the lane to the rear of the existing convenience store and not within the store area that is shown on the submitted plans. The submitted plans show an enclosed area with waste storage and whilst it is not clear whether this area would house bins for both businesses and the residential accommodation above, I consider that there would be sufficient space to accommodate the required number of bins. Furthermore, I consider that this space could be secured and retained via a suitably worded condition.
15. As such I do not consider that the residual cumulative impacts of the proposal would be severe in terms of highway safety, a circumstance the Framework requires to prevent development on transport grounds. I do not consider that the proposal would have a materially harmful effect on the safety of any users of adjacent highways. In this regard I consider that the proposal would accord with the highway safety requirements of Policy CS13 of the CSUCP, Policies DM12 and DM34 of the DAP and HFT5 and HFT8 of the SPD.

Conclusion

16. Although I have not found harm in relation to highway safety, the proposal would unacceptably harm the living conditions of neighbouring occupiers which is a matter of overriding concern.
17. Accordingly, for the reasons outlined above and taking all other matters raised into account I conclude that the appeal should be dismissed.

J Hunter

INSPECTOR