



Appeal Decision

Site visit made on 13 September 2022

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27/09/2022

Appeal Ref: APP/M2515/W/22/3292916

59 Newark Road, Lincoln LN5 8NE

- 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 Syed Hamid Ali Shah Bukhari against the decision of City of Lincoln Council.
 - The application Ref 2021/0934/FUL, dated 12 November 2021, was refused by notice dated 1 February 2022.
 - The development proposed is the change of use of ground floor from retail (Use Class E) to Hot Food Takeaway (Use Class Sui Generis).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council amended the description of the proposed development from 'change of use from retail (Use Class E) to takeaway (Use Class Sui Generis)' to 'change of use of ground floor from retail (Use Class E) to Hot Food Takeaway (Use Class Sui Generis)'. The revised description has also been used by the appellant on the appeal form. I consider that the revised description represents a more concise summary of the proposed development had have proceeded on this basis.

Main Issues

3. The main issues relevant to this appeal are:
 - the effects of the proposed development upon the living conditions of the occupiers of neighbouring properties, with particular reference to noise; and
 - the effect of the development upon the character and appearance of the St Catherine's Conservation Area (the CA).

Reasons

Living conditions

4. The appeal site contains an existing end of terrace building located close to several residential dwellings that are predominantly terraced in nature. There are relatively few commercial or leisure facilities in the surrounding areas. There is an open area in front of the appeal site and the edge of the pavement.

5. By reason of the nature of a takeaway, it is likely that the proposed development would operate during periods of time, such as the late evening. These are periods when residents of the neighbouring dwellings are likely to expect a greater level of peace and quiet.
6. The nature of the proposed development is such that noise might be generated during these periods. This would occur from activities such as customers queuing to enter the takeaway, or congregating outside in order to eat their food. These activities that are likely to result even though the proposed development would not include an external seating area. This is because there is an area to the front of the appeal site, where patrons of the proposed takeaway might congregate.
7. Owing to the proximity of the takeaway to the surrounding residential dwellings, the noise generated by the proposed development is likely to be audible in the surrounding area. Therefore, the living conditions of the occupiers of neighbouring properties are likely to be eroded.
8. This situation is more likely to occur owing to the lack of physical structures that might diffuse any such noise. Although there are a variety of activities being undertaken in the vicinity of the appeal site, the surrounding land uses are likely to be quieter in nature than the appeal proposal. Although there are some takeaways in the surrounding area, these are relatively few in number. There are also relatively few other uses in the surrounding area that might be operational during the late evening period. This means that the proposed development is likely to be more notable in the surrounding area.
9. Although the nearby road might be busy, there is a likelihood that, at times, usage and associated noise might diminish. This means that it would not offer any reliable screening of the noise that would result from the proposal.
10. I understand that the proposed development could operate in accordance with the flat that exists on the first floor of the building. Whilst this is a matter of note on the grounds that it would ensure that the occupiers of the flat would be associated with the operation of the attached takeaway as they would not be effected by the generated noise to the same degree. However, this matter would not overcome my concerns regarding the effects of the development upon the living conditions of the occupiers of the significant number of other properties in the surrounding area.
11. The planning application was accompanied by a noise assessment. Whilst this demonstrated that the proposed development would not generate excessive noise arising from activities such as the cooking process. However, the assessment did not address noise that might arise from activities such as the congregation of customers. Therefore, this does not overcome my concerns.
12. I understand that the appeal site could be used for commercial activities, including, potentially, a restaurant. The evidence before me indicates that these could operate on a continual basis. However, these are unlikely to have the same effects on noise levels as the appeal proposal given that there is unlikely to be the congregation of people outside.
13. Although no objections to the planning application were received from the Council's Environmental Health officers, this is only one of the matters that must be considered and therefore do not outweigh my previous concerns.

14. I therefore conclude that the proposed development would have an adverse effect upon the living conditions of the occupiers of neighbouring properties. The proposal, in this regard, would conflict with Policy LP26 of the Central Lincolnshire Local Plan (2017) (the Local Plan). Amongst other matters, this requires that the amenities of all future occupants of neighbouring land must not be unduly harmed.

Character and appearance of the Conservation Area

15. The appeal site is located within the St Catherine's Conservation Area (the CA). For the purposes of this appeal, the significance of the CA is, in part, derived from the presence of traditionally designed building arranged in linear patterns. The appeal site contributes to this character.
16. The proposed development, by reason of its type, would require the installation of an extraction flue. This is shown on the side elevation of the appeal site. This poses a concern given that such an installation would represent the introduction of a more modern incursion into the CA.
17. This is a concern given the prominence that such an extraction flue would have. Owing to the pattern of development in the vicinity, any such installation would be prominent and visible from several different vantage points in the surrounding area. Therefore, the erosion of the character of the CA would be readily perceptible, even though building lines would be retained.
18. In particular, views of any such installation are likely to be visible for significant proportions of the nearby St Catherine's Grove and, depending on its position, potentially portions of Newark Road. Therefore, the erosion of the character and appearance of the CA would be particularly notable and adverse.
19. The proposed flue could be colour treated. However, this would not overcome the harm that would arise from the form and positioning of the proposed flue. Therefore, this suggestion does not overcome my previous concerns.
20. I understand that a Certificate of Lawfulness has been granted that means that the appeal site could be used as a restaurant. Whilst there are some similarities between a restaurant and a takeaway, the evidence before me is indicative that the planning permission would be required for the installation of an extraction flue to serve any future restaurant.
21. As planning permission does not appear to have been granted for such a development, there does not appear to be a realistic prospect that such a flue would be installed in the foreseeable future. Therefore, I do not believe that this represents a fall-back position. This therefore does not overcome my concerns.
22. I am aware of other extraction flues in the surrounding area. I do not have the full information regarding the planning circumstances of these, which lessens the weight that can be attributed to them. Nonetheless, I note that due to their positioning and the arrangement of other buildings, these are not as prominent in the CA. In contrast, the road network arrangement and the presence of a more open area to the rear of the appeal site means that these are not characteristics that can be attributed to the appeal site. In result, the presence of extraction flues elsewhere in the surrounding area does not allow me to disregard my previous concerns.

23. It has been suggested that flues have been installed in other Conservation Areas and on Listed Buildings elsewhere. Although this is a matter of note, it is the siting of the proposed installation in this case which gives rise to the harm to the CA. Therefore, this does not allow me to disregard my previous findings.
24. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the CA. The development, in this regard, would conflict with the requirements of Policy LP25 of the Local Plan. Amongst other matters, this seeks to ensure that developments protect,

Other Matters

25. The proposed development would be accessible and is unlikely to have an adverse effect upon the levels of light, outlook and privacy experienced by the occupiers of neighbouring properties. Whilst these are matters of note, they are only some of the points that must be assessed and therefore do not overcome my findings in respect of the main issues.
26. Concerns regarding the manner in which the application was considered by the Council fall outside the scope of this decision.

Planning Balance

27. The harm that would occur to the character and appearance of the CA would not be severe and therefore it would be 'less than substantial' within the meaning of the National Planning Policy Framework (the Framework). Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal.
28. In this instance, the benefits from the proposal include the re-use of a vacant building and potential refurbishment. In addition, there would be some economic benefits arising from increased economic activity. However, owing to the scale of the proposed development, such benefits are only likely to be of a small scale. In consequence, they can be attributed a limited amount of weight.
29. Therefore, when giving significant importance and weight to the special attention I must pay to the desirability of preserving or enhancing the character and appearance of the Conservation Area, I find that the harm that would arise from the proposal would not be outweighed by its limited public benefits. Accordingly, there would be a conflict with Paragraph 200 of the Framework as harm to designated heritage assets would not have clear and convincing justification.

Conclusion

30. The proposed development would have an adverse effect upon the character and appearance of the CA and would erode the living conditions of the occupiers of neighbouring properties. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR