



Appeal Decision

Site visit made on 13 December 2022

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Appeal Ref: APP/R1038/W/22/3299535

1 Chesterfield Road Dronfield, North East Derbyshire S18 2XA

- 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 Adeal Ali against the decision of North East Derbyshire District Council.
 - The application Ref 21/01443/FL, dated 21 November 2021, was refused by notice dated 19 May 2022.
 - The development proposed is Change of Use from Office (class E) to hot food takeaway (Sui Generis) with new extractor flue and associated alterations (Conservation Area/Affecting the setting of a Listed Building) (Amended Plans).
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Decision

1. The appeal is allowed and planning permission is granted for the Change of Use from Office (class E) to hot food takeaway (Sui Generis) with new extractor flue and associated alterations at 1 Chesterfield Road, Dronfield, North East Derbyshire S18 2XA in accordance with the terms of the application, Ref 21/01443/FL, dated 21 November 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning appeal form and the Council's decision notice dated 19 May 2022. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. However, in the interests of clarity I find the amended description to cover the full extent of the proposed development and it excludes the reference to illuminated signage, which is not before me. In the decision above, I have removed the references to the Conservation Area, Listed Building and amended plans as these are not a description of the development.
3. The proposal was amended during the course of the application. The drawings the Council made its decision on include alterations to the shop front removing the roller shutter, advertisement and amending the doors. The Council considered the application on this basis and so shall I.
4. The site is located within the Dronfield Conservation Area (CA) and opposite the Grade II listed Lea Road Bridge (List entry:1417692). I have therefore had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues are:

- whether the proposal would harm character and appearance of the area and the host property including nearby designated and non-designated heritage assets;
- whether the proposal would make a positive contribution to the vitality and viability of the Dronfield Local Centre;
- whether the proposal would harm the living conditions of occupiers of nearby properties with particular regard to noise and odour; and
- whether the proposal would have an unacceptable effect on highway safety.

Reasons

Character and appearance

6. The appeal site comprises a vacant stone mid-terrace building situated on Chesterfield Road. The appeal building is identified in the Dronfield Neighbourhood Plan 2016-2034 (Neighbourhood Plan) as a Character Building, and thus is considered to be a non-designated heritage asset. It is also located within the designated Local Centre. The immediate area around the appeal site on Chesterfield Road is therefore characterised by a small range of commercial buildings and uses interspersed with residential properties.
7. From the information submitted and from my own observations, the significance of the CA is derived in part from the historic architectural and social development of the area. The appeal property contributes to the character and appearance of the CA as it forms part of a terrace of historic buildings. The appeal site is seen within prominent views of the Lea Road Bridge, and highly visible from within the CA. The significance of the Listed Lea Road Bridge is derived from its engineering, architectural and historic interest.
8. The submitted drawings show alterations to the shop front comprising two replacement doors. These appear to be within the existing apertures of the building; therefore, no significant alterations are proposed. The alterations to the principal elevation are sympathetic to the existing character and appearance of the building and suitable materials could be used and controlled through the imposition of a suitable condition. It is noted that the appellant contends the amended designs were discussed, amended and agreed with the conservation officer, which the Council does not dispute in its statement.
9. Whilst the flue would project above the roof, the height is not excessive and there is rising land and buildings behind the site, which alleviates the appearance. The SVP flue does not project above the ridge and is a minor element on the rear of the building. Whilst the extract flue would be visible from the front of the site, overall, the proposed alterations would not appear incongruous in the context of the surrounding area which also comprises shop fronts, advertising and residential dwellings and other commercial features and suburban structures. The dark colour and its siting on the rear roof plane would lessen the visual impact.
10. In the context of the mitigation and for the reasons given above, I find the harm to the CA and host building to be less than substantial in this instance,

but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.

11. The appellant is of the opinion that the change of use would keep the building from further decay due to lack of use, revitalize and retain the building into the future. I find that such a use would bring an economic benefit through jobs, business rate income, local expenditure and business relationships with associated services for the proposed use.
12. I therefore give moderate weight to the above public benefits, which include social, environmental and economic elements. Given the limited scale of the harm caused by the flue, the acceptability of the alterations and mitigation proposed, this would outweigh the less than substantial harm to the CA. For the same reason, the proposal would not cause unacceptable harm to the non-designated heritage asset.
13. The Council has not raised any concerns in relation to the setting of the listed Lea Road Bridge or other listed buildings. Although the host building is seen within views of it, for the same reasons as I have referred to above, the proposed development preserves its setting. I therefore conclude that the proposal would not harm the character and appearance of the area and the host property including other nearby designated and non-designated heritage assets.
14. The proposal would accord with the North East Derbyshire Local Plan 2014 – 2034 (Local Plan) Policies SS1, SDC5 and SDC9 which seek amongst other aspects to ensure sustainable development, through design which protects designated and non-designated heritage assets. The proposal would also accord with the Dronfield Neighbourhood Plan 2016 – 2034 (Neighbourhood Plan). Policies E2, D2 and D3 which have good design and protection aspirations in respect of shop frontages and heritage assets.

Local centre

15. The officer report sets out the appeal site is within the designated Dronfield Local Centre. The Council's concerns are that the proposal would reduce the retail focus and daytime use. The supporting text to the Neighbourhood Plan Policy E4 as far as it relates to the concerns presented, recognises that takeaways can contribute to the mix of shopping uses, provide services to local communities and employment opportunities.
16. The evidence suggests the former use of the site was in use as an office, but currently vacant. There is no evidence before me that retail use would be displaced, or that activity would be so different to an office, which is also not a shopping element. In any event, the stated opening hours would include a significant portion of the daytime, and not necessarily restrict to evening and night use. The provision of a new frontage would be a positive aspect, in the context of an existing vacant unit during the daytime.
17. I also do not have any evidence that the proposed use would compete or overwhelm adjacent land uses. From my observations, and the evidence suggesting there are several other food establishments on Chesterfield Road, the immediate area around the appeal site is not proliferated with multiple or a significant number of evening uses. Nor would it result in a clustering effect

from an accumulation of takeaways, which would in any event be within the gift of the Council to control if a subsequent application were made nearby.

18. In addition, Policy E4 of the Neighbourhood Plan sets out that proposals for hot food takeaways will be supported when it can be demonstrated that such proposals make a positive contribution to the viability and vitality of the town centre. I find that the presence of such a use would contribute to the diversity and mix of uses during a portion of the day and providing increased activity and surveillance later in the evening to the Dronfield Local Centre. As such, given my earlier findings in respect of public benefits the proposal has demonstrated it would make a positive contribution, and not detract from the nearby town centre.
19. The proposal would accord with Policy SS7 of the Local Plan and Policy E4 of the Neighbourhood Plan. These policies combined and insofar as they are relevant to the appeal seek to ensure proposed development is compatible in location to the character and function of the area without prejudicing intended land uses including shopping areas.

Living conditions

20. The new use would operate until 23:30 hours. Consequently, it is likely to generate some noise and activity, at a time when most people are likely to be at home and can reasonably expect quieter conditions within which to relax and enjoy their properties. The cooking of food has the potential to adversely affect the living conditions of nearby residents. This can be because of odours emanating from the premises as well as noise and vibration from extraction equipment.
21. That being said, the appeal site is next to a road and among a range of uses and in proximity to a railway line serving the nearby Dronfield Train Station. It is inevitable that the sounds associated with town centre activities and passing traffic would therefore be a normal experience for many local residents. The living conditions of occupiers of neighbouring properties would not be adversely affected by customers in the very late evening or early hours of the morning and that activity restricted to the front of the unit next to the road. Furthermore, the use of the appeal premises as a shop or office, if recommenced, would generate some activity such as the general coming and going of customers, staff and service deliveries.
22. The proposed extraction flue is sited in close proximity to adjacent first floor residential accommodation. It's extract point would be higher than the windows of the properties in the adjoining buildings. In this case, the residents most likely to be affected are those within the rooms close to the appeal premises which the Council has identified as No 3A Chesterfield Road, as opposed to those on the southern side of Holborn Avenue, which are sited approximately 15m away at an elevated level away from the appeal site, with intervening trees.
23. Whilst I note residents to the rear experience issues from a nearby premises, from the evidence that has been submitted, silencers and filters are to be installed on the new extraction equipment. I also note a maintenance schedule. In addition the Council's Environmental Health Officer (EHO) does not object to the proposal. I therefore do not have sufficient evidence that this proposal would not be able to mitigate the effects that can arise from such uses,

even given the surrounding topography, if equipment is installed and maintained in accordance with the requisite specifications.

24. These factors taken together, lead me to conclude that the proposed use would cause no harmful effects in terms of noise or odours to the occupants of adjacent and nearby properties. The proposal would therefore accord with Local Plan Policy SS7, which seeks to ensure development is compatible with land uses. It would also accord with the Neighbourhood Plan Policy E4 which seeks to ensure such proposals would not negatively impact upon the living conditions of surrounding residents.

Highway safety

25. The appeal building is located close to the chevrons for a Zebra crossing, and double yellow line parking restrictions extend in both directions beyond the chevrons. The Council contends that the proposed use, by the very nature of its takeaway characteristics, such as deliveries or collection, could result in on-street parking whilst food is collected or distributed. Interested parties have raised that this has occurred at nearby premises, and that the Police do not have the capacity to enforce parking restrictions.
26. I did note parking bays between Snape Hill Road and the appeal site for delivery and service vehicles as well as other on-street parking and car parks nearby. There is nothing before me to indicate consistently high levels of parking would result from the proposal or that visitors would park their vehicles inconsiderately or illegally to the extent that highway safety or traffic flows would be prejudiced. To the contrary, Derbyshire County Council Highways Officers raised no objections to the proposed change of use from a highway safety perspective, or whether it would prevent vehicles turning onto other roads. No accident data, nor any concerns from the Police have been presented to me.
27. In the absence of substantive evidence, I conclude that the proposed development would not lead to unacceptable on street parking and therefore would not harm highway safety. Consequently, the proposal would accord with policy ID3 of the Local Plan which requires the impact on highway safety to be acceptable. The proposal would also accord with the advice contained within the National Planning Policy Framework which seeks to ensure safe and suitable access for developments.

Other Matters

28. A number of interested party comments were submitted, including concerns regarding vermin, fire risk, and whether the business would be viable. I do not have evidence that this proposal would lead to additional vermin, particularly as measures for waste are conditioned, and bin storage shown within the front of the appeal building. It is not clearly explained how the proposal would cause a fire safety risk particularly if the new flue is operated and maintained in accordance with agreed parameters, and it is not a requirement for me to consider if the business is viable.
29. Concerns have been raised in respect of additional litter from customers and anti-social behaviour, particularly from younger people, and that it would cause a safety risk to nearby public steps. However, I note from the interested

parties there are litter bins nearby, therefore the latter aspects seem related to the behaviour of individuals and so carries limited weight.

30. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010. The Act sets out the relevant protected characteristics which includes age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act. Given my findings on highway safety, there is no substantive evidence that the zebra crossing that is used by children and elderly people, would be compromised. The proposal would not be contrary to the aims of eliminating discrimination against persons with the protected characteristics of disability, and age, advancing equality of opportunity for those persons and fostering good relations between them and others.

Conditions

31. Where necessary, the suggested wording of the conditions that are required has been adjusted. The parties have had the opportunity to comment on these. In addition to the standard time limit condition [1], the plans should be specified in the interests of certainty [2]. I have imposed the EHO suggested condition for construction hours to prevent undue disturbance from this [3]. There is some evidence that historic fabric may be present, therefore the need for specific measures to deal with recording of this is required [4]. To ensure a satisfactory appearance, conditions in relation to the doors and flue are imposed [5 and 6].
32. Due to the proximity to residential properties a scheme for the extraction system and waste measures would be necessary and should be submitted and agreed in writing [7 and 8]. For the same reason restrictions of hours of opening are imposed [9], however I have proceeded with the later hours suggested as opposed to those suggested in the Council's planning statement rather than the EHO given my findings on living conditions above.
33. I have not imposed a condition suggested by the Council which suggests a flue is replaced with an in-line slate vent. There is no evidence before that this would adequately deal with extraction nor is it clear from the evidence before me that the relevant consultee has had the opportunity to comment on the acceptability of such a system.

Conclusion

34. For the reasons given above I conclude that the appeal should be allowed.

K Williams

INSPECTOR

Schedule of Conditions.

- 1) The development hereby permitted shall be started within 3 years from the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the amended plans listed below (which were uploaded to the Council's website on 16.03.2022), unless otherwise subsequently agreed through a formal submission under the Non Material Amendment procedures and unless otherwise required by any condition contained in this decision notice: Proposed Ground Floor Plan (Drawing Number 21/11/04/13C); Proposed First Floor Plan (21/11/04/14B); Proposed Roof Plan (21/11/04/15A); Proposed Front Elevation (21/11/04/16C); Proposed Rear Elevation (21/11/04/17A); Proposed Section (21/11/04/18B); and Proposed Front Elevation (21/11/04/019C).
- 3) During re-developing the premises, works should not take place on a Sunday or Bank Holiday nor before 0800hrs or after 1800hrs on Monday – Friday nor before 0800hrs or after 1300hrs on Saturday.
- 4) The developer shall give the local planning authority 21 days advance notice of the start of any works for the removal of the boarding above the front entrance door and, for a period of 14 days before any work takes place, access to the building shall be given to the local planning authority's Conservation Officer or a person/body nominated by the local planning authority for the purpose of recording the building. Any historic features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and development shall not continue until a scheme for the retention and/or the recording in accordance with details shall first have been submitted to and approved in writing by the local planning authority. The development shall then be implemented in accordance with the approved scheme and drawings 21/11/04/16C and thereafter retained.
- 5) Prior to the commencement of the works hereby permitted, full details, including elevations and sections of all new external doors and transom light to a 1:10 scale, materials, mouldings, glazing type, colour / finishes and door furniture, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, and thereafter retained.
- 6) All flues shall have a matt dark grey paint finish and maintained as such for perpetuity.
- 7) Before the use hereby permitted takes place, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 8) Before the use hereby permitted takes place, a scheme for the storage of waste shall have been implemented in accordance with a scheme to be

first submitted to and approved in writing by the local planning authority. All waste storage shall thereafter be maintained in accordance with that approval and retained for so long as the use continues.

- 9) The premises shall only be open to public between the hours of 12:00-Midday to 23:30 on any day.

End of schedule.