



Appeal Decision

Site visit made on 7 November 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/M4510/W/23/3327992

427-429 Stamfordham Road, Westerhope, Newcastle Upon Tyne NE5 5HB

- 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 Lata against the decision of Newcastle City Council.
- The application Ref 2023/0266/01/DET, dated 17 February 2023, was refused by notice dated 28 July 2023.
- The development is described as a "single storey extension to existing restaurant".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme seeks retrospective permission for the development, and I was able to view the works which have already been undertaken in situ at my site visit. The development has already been carried out in line with the proposed plans. I have considered the appeal on this basis.

Main Issues

3. The main issues of the appeal are the effect of the development on
 - The character and appearance of the host property and surrounding areas; and
 - The living conditions of neighbouring occupiers, with particular regard to noise and disturbance;

Reasons

Character and Appearance

4. The appeal site is a substantial, detached building, prominently located on the corner of Stamfordham Road and Wheatfield Road. The building is set back from the main road, with a large customer car to the front, and further car parking located to the rear. The appeal site also adjoins a short terrace of two storey cottages known as Belmont Cottages, with No.1 Belmont Cottages (No.1) adjoining the boundary of the appeal site. The surrounding area is mixed in character, with residential, commercial and health uses located nearby.
5. The appeal scheme relates to extensions to the front and side of the property, which provide additional covered seating areas for the restaurant. The extension to the side extends the full width of the area between the original side wall of the host property and the adjoining residential property, No.1. Most

- of the extended part is enclosed by glazing, timber or perspex, but there are some gaps within the structure along the boundary with No.1. The extension to the front extends almost the full width of the original property, obscuring the ground floor windows. This extension is partially open and contains a number of advertisements along its main elevation.
6. These extensions to the front and side of the property and are highly visible from Stamfordham Road and it is clear when viewing the building from the site and surrounding area that these are enclosed outdoor spaces. Their timber construction and use of mix of perspex and glazing provides a visual contrast to the brick-built appearance of the host building and has a more temporary appearance than other extensions found within the local area, including the previous side extension on the opposite side of the appeal property. The use of timber is not a material that is typically found in the local area, other than for use in boundary treatments and domestic outbuildings.
 7. The extension to the side encloses a reasonably large gap between the side wall of the original building and the neighbouring property, No.1. Although the extension is single storey, and not an inappropriate scale to the host building, it is not a suitable design. Furthermore, when viewed from the street, the extensions to the side and front of the building appear at odds with its more traditional character and as result, in combination, the design, scale and materials used in the extensions are harmful to the character of the host building and surrounding area.
 8. I acknowledge that the original motivation for creating an outdoor seating area was in response to the COVID-19 pandemic, and the structure has now been enclosed to improve its usability and to mitigate noise and disturbance. However, this appeal is seeking approval for the retention of the structure as built, which, if approved, would enable the structure to become a permanent extension to the building.
 9. Whilst I have had regard to the appellant's suggestion that more permanent materials, including of an alternative colour could be secured by imposition of a planning condition, this would represent an entirely different scheme to the one which is before me.
 10. Consequently, I therefore find on this main issue that the extensions are not of a high-quality design and cause harm to the character and appearance of the host property and surrounding area. Therefore, the development is in conflict with Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle 2015 (CS) and Policy DM20 of the Development and Allocations Plan 2015 (DAP) which require, amongst other things, high quality and sustainable design which responds positively to local distinctiveness and character and uses materials, colours and textures appropriate to the characteristics of the area.
 11. The development is also contrary to Chapter 12 of the National Planning Policy Framework (the Framework) which requires high quality design that functions well and adds to the overall quality of the area, are visually attractive and are sympathetic to local character.

Noise and Disturbance

12. The side extension adjoins the side wall of No.1, which contains an upper floor window directly overlooking the roof of the side extension and it is understood that this is a bedroom window. Within the rear elevation of No.1 are two further windows which are in close proximity to the extension and overlook the appeal site.
13. The premises has been in commercial use for some time and was granted planning permission¹ for a restaurant use in 2014. I note that the original planning permission did not impose any restrictions on opening hours, nor does it restrict the use of external areas. Whilst I understand that the use of the external areas of the site as part of the restaurant use is currently controlled through licensing regulations, this is a separate regulatory process and therefore not a matter for this appeal.
14. The application was supported by a noise assessment, prepared by NJD Environmental Associates (Feb 2023). The Noise Report² concludes that the increase in noise levels from the 'baseline' position to the 'proposed development' position would result in a major noise impact in both the short-term and long-term. The report therefore recommends a reduction in noise levels of 15-20dB will be required. The report states that if this can be achieved, this would change the level of impact to minor/negligible.
15. The Noise Report³ states that this should be readily achievable by enhancing the construction, including replacing perspex with glazing and single glazing with double glazing. However, the report includes no specific details in relation to the existing construction and whether these mitigation measures can all be accommodated within the existing structure. Therefore, whilst I have had regard to the use of a suitably worded planning condition to seek noise mitigation measures, in this particular case, I have not been presented with any substantive evidence that they can be achieved within the existing structure.
16. As such, it has not been demonstrated that the development can achieve acceptable levels of noise. I therefore find that in this particular case, the imposition of a planning condition is not considered to be a suitable mechanism to ensure the living conditions of the neighbouring occupiers are protected.
17. Whilst the appellant has stated the Council failed to take into account the findings of this report, the Council has confirmed that they consider the report to be a comprehensive, well thought out document which represents the situation accurately. Therefore, I disagree with the appellant that the Council failed to take this supporting evidence into account when reaching their recommendation on the application.
18. I accept that the enclosure of these outdoor areas provides some benefits to neighbouring properties in terms of containing a degree of the noise and disturbance. I also accept that the appeal site is located on a busy road, the road which includes a number of bus routes is busy at all times of the day. However, these factors do not alter the findings of the noise report in respect of the potential for significant harm to occur to neighbouring occupiers.

¹ Planning Application Ref: 2014/0276/01/DET

² Paragraph 5.5.3

³ Paragraph 6.1.5

19. Consequently, I therefore find that the development does not provide adequate living conditions for neighbouring occupiers, with particular regard to noise and disturbance. It is therefore contrary to Policy CS14 of the CS and DM23 and DM24 of the DAP, which requires amongst other things, that noise, disturbances, from surrounding land uses and/or associated operations will not have an unacceptable adverse impact on residential amenity.

Other Matters

20. I have had regard to the provisions of Schedule 2, Part 2, Class G of the Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended) which permits one moveable structure with the curtilage of a premises use for the purposes of Class E(b), subject to a number of conditions and limitations. However, in this particular case, planning permission is being sought for an extension, rather than a moveable structure. Furthermore, the proposed development is within 2 metres of a residential property. It has not been demonstrated that the development complies or is capable of complying with the conditions and limitations set out in Class G, therefore I afford this very limited weight.
21. I have also had regard to the economic benefits of the development, in so far as it increases the supply and variety of restaurant seating for an existing business. However, these benefits are limited and therefore not sufficient to outweigh the harm I have identified to the character and appearance of the area, or the harm caused to the living conditions of the occupiers of neighbouring properties.

Conclusion

22. For the above reasons, the proposed development would not accord with the development plan when taken as a whole. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. The appeal is therefore dismissed.

K Lancaster

INSPECTOR