



Appeal Decisions

Site visit made on 16 January 2024

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal A Ref: APP/X1355/C/23/3330600

Appeal B Ref: APP/X1355/C/23/3330601

Land and buildings known as Castleside Club, 13 Rowley Bank, Castleside, Consett, County Durham DH8 9QT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr Philip Wallace (Castleside Club Ltd) and Appeal B is made by Miss Rebecca Graham against an enforcement notice issued by Durham County Council.
- The notice was issued on 2 October 2023.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land from a drinking establishment to a mixed use involving (1) drinking establishment, (2) use for the purpose of selling hot and cold food and refreshments for consumption on and off the premises facilitated by a mobile catering unit with associated customer parking, and (3) the parking and storage of a mobile catering unit.
- The requirements of the notice are to:
 - a) Permanently cease the use of the Land for the sale and consumption of food facilitated by an outdoor catering unit, and for associated vehicle parking for customers.
 - b) Permanently cease the use of the Land for the parking and storage of a mobile catering unit.
 - c) Permanently remove from the Land any equipment, fixtures and fittings, equipment and furniture associated with the catering unit.
- The period for compliance with the requirements is: 14 days.
- The appeals are proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/X1355/W/23/3328539

Castleside Club, Rowley Bank, Castleside DH8 9QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Philip Wallace against the decision of Durham County Council.
- The application Ref DM/23/01388/FPA and dated 13 May 2023 was refused by notice dated 22 August 2023.
- The development proposed was described as '*retrospective planning application seeking change of use of the car park to a mixed use car park and hot food takeaway*'.

Summary Decision: The appeal is dismissed.

Formal Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

Appeal C

2. The appeal is dismissed.

Preliminary Matters

3. Appeal A is made by Mr Philip Wallace on behalf of the Castleside Club Ltd whilst Appeal B is made by Miss Rebecca Graham. Appeal C proceeds solely in the name of Mr Philip Wallace. I am advised that Mr Wallace is the secretary to the Castleside Club Limited and that Miss Graham is the proprietor of the mobile catering business which operates from the mobile catering unit in question at the appeal site.
4. Although the application for planning permission (Appeal C) was initially described in the terms set out above, the Council adopted a slightly different development description. The plans that I have before me in relation to Appeal C show the 'hot food takeaway van' in two different locations within the car park at the appeal site. However, neither of these indicated locations tally with the position of the mobile catering van as I saw it during my visit to the site, at which time it was sited in a different location again.
5. It is not therefore entirely clear from the submitted plans and my observations as to the appellants' exact proposed location for the hot food takeaway use, and thus the exact extent, and which part of the car park, the Appeal C scheme relates to. However, given the mobility of the mobile catering unit and the various documented locations I shall proceed on the basis that the Appeal C scheme relates to the whole of the car park area as it lies within the wider, red-edged application boundary line. I shall also adopt the appellant's development description rather than that of the Council in my consideration of Appeal C, albeit without reference to the word 'retrospective' as it is not an act of development and as the mobile catering unit is not located in either of the indicated proposed locations.
6. The appeal site as set out in the notice and the application for planning permission encompasses the whole of the Castleside Club site. Thus, the club building itself, together with site frontage, access from Rowley Bank (A68) and the extensive area of hard-surfaced car park at the side and rear of the building comprises the appeal site as defined by the red-edged boundaries of the notice and application site plan. Although the given appeal site address differs between Appeals A and B and Appeal C, I am satisfied that all three relate to the same site. I have determined the appeals accordingly.
7. The appellants both refer briefly to the appeal site's planning history, both stating that the car park has been subject to several changes of use in the past¹. It is not stated what these changes of use were, or when, although reference has been made to a permission for the erection of a portable building for use as a taxi office². I have no further details of this permission, or other older applications cited by the Council in their submissions but, even if this were to have been the case, a portable building from which a taxi office may have operated is a materially different prospect to that which is before me. Any planning permission granted to that end does not confer permission upon, or demonstrate that there has not been a breach of planning control arising from, the material change of use set out in the notice's allegation.

¹ 1st paragraph, joint appellant letter dated 10.12.2023 and point 7. of undated letter from Mr Wallace / Castleside Committee submitted at Final Comments stage

² LPA Ref No: 1/1991/0383/55206 – 'Erection of portacabin for use as taxi office' – approved 1 January 1992

8. Whilst the argument set out above may be capable of constituting an appeal on a hidden ground (c), the appellant has not made a case in this respect to the required standard and thus the hidden ground (c) appeal must fail. Furthermore, whilst the Council have considered the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) in respect of permissions granted as 'permitted development' it is not evident that these arguments have been put forward by the appellants. Nevertheless, I have not been presented with any evidence to counter the Council's conclusions in these respects, thus adding further weight to my conclusions regarding a hidden ground (c) appeal.

Appeals A and B – the appeals on ground (b)

9. An appeal may be brought on ground (b) if it is felt that the matters alleged in the notice have not occurred. To succeed on this ground therefore the appellants must prove on the balance of probability that the use of the land identified in the notice has not changed from that of a drinking establishment to a mixed use comprised of the drinking establishment and those other uses and activities identified at points (2) and (3) of the alleged breach of planning control.
10. The appellants have made no real attempt to advance a case that the breach of planning control, and thus the material change of use described on the notice and set out in the banner heading above, has not occurred. It was evident to me during my visit to the site that the mobile catering van was present within the site and, from the Council's photographic evidence, had been so for some time. The appellant³ was present at the time of my visit⁴ and in the process of preparation for service, albeit that I did not witness any patrons arriving or being served during that time. It is also evident from the submissions made prior to, and during, the course of the appeal that the appeal business has continued to operate from the appeal site since the service of the notice.
11. Taking these matters together therefore, it has not been demonstrated to the required 'balance of probabilities' standard that the breach of planning control constituted by the matters stated in the notice has not, as a matter of fact, occurred. The appeals on ground (b) therefore fail and the enforcement notice is upheld.

Appeal C

Main Issues

12. The main issues are:

- Whether or not the appeal site is an appropriate location for the appeal scheme;
- The effects of the appeal scheme on the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance, privacy and cooking odours; and
- The effects of the appeal scheme on highway safety.

³ The appellant for Appeal B

⁴ Between 1000 and approximately 1040 on the date set out in the banner

Reasons

Location of development

13. County Durham Plan (2020) (CDP) Policy 30 sets out the Council's approach to hot food takeaways (HFTAs), the supporting text⁵ to which states that it is a key objective of the Council to reduce levels of obesity. One of the ways of achieving this is, it says, by encouraging healthy eating. Thus, in locations beyond defined centres but within 400 metres of an entry point to an existing school CDP Policy 30 states that proposals for A5 (HFTA) uses will not be permitted in order to promote healthy lifestyles in young people. It goes on to state that where locationally acceptable, consideration will be given to the impact of such schemes on amenity, with particular regard to noise and odours. If considered to give rise to unacceptable impacts on these grounds, schemes should be refused.
14. Although I have not been provided with a copy of CDP Policy 9⁶ there is no dispute between the main parties that the appeal site lies beyond a defined centre. Opinion differs as to the distance between the appeal site and Castleside Primary School. The Council confirm a distance of 'approximately 390 metres', calculated using the Council's mapping system whilst the appellant suggests distances of between approximately 482 metres and 486 metres, depending on which route is used to travel between the two sites. Neither party have however provided further details of the exact basis upon which these calculations have been made, particularly with regard to the exact starting and finishing locations in each instance.
15. The appellant has sought to argue that given the type of school nearest to the appeal site, it is unlikely that pupils would be able to access the site at break or lunchtimes, and that the mobile catering unit would not be open during school drop-off and pick-up times. It is not clear whether or not Castleside Primary School allows pupils, particularly older pupils, out at lunch and break times on an unaccompanied basis or what the exact school times are for pupils. However, whilst it appears that the appellant's specified opening hours would be likely to be outside school drop-off / pick-up times, CDP Policy 30 does not differentiate between the type of school, the age of pupil or the opening hours of the business in question. Even if not operating, the residual presence of the business in terms of the mobile catering unit and signage would be a constant reminder to passers-by of its presence and could result in 'pester-power' for parents and children travelling outside school times and school days.
16. Given the difference in distances quoted by the respective parties, even if I were to conclude that the appeal site lies more than 400 metres from the entry point to Castleside Primary School, CDP Policy 30 is clear that amenity considerations, particularly in relation to noise and odours, will be determinative should a scheme have an unacceptable impact on amenity and living conditions. As such, I turn to matters of amenity and living conditions, below.

Living conditions

17. Castleside Club is a long established club in a prominent street frontage position on the A68 Rowley Bank with residential properties on either side of it,

⁵ Paragraph 5.312

⁶ As cross-referenced in CDP Policy 30 – Policy 9 (Retail Hierarchy and Town Centre Development)

opposite and, more recently, to the rear. Access to the club's car park is taken from the A68 Rowley Bank at the side, between the building and the neighbouring residential property at 15 Rowley Bank.

18. The closest neighbouring residential properties both share long boundaries with the appeal site; No 15 broadly to the south of the appeal site next to the access from Rowley Bank in to the car park and where there are some car parking spaces directly adjacent to the boundary, and Quarry House to the rear also adjacent to the main car park. Both residential properties are relatively recent, Quarry House more so than No 15, but both post-date the operation of the club and its car park.
19. The Council's concerns, and those of nearby residents, regarding the effect of the mixed use on amenity and living conditions are essentially two-fold. These concerns therefore relate to noise, disturbance and loss of privacy from the comings-and-goings of patrons accessing and exiting the site and collecting food orders and, from the operation of the unit itself, odours associated with the cooking of food.
20. The mobile catering unit appears to have operated in various positions within the car park, either at the side of the club building between it and No. 15, or to the rear of the club building. At the time of my visit to the site, it was positioned just beyond the southern corner of the club building, its servery facing north-westwards into the main body of the car park.
21. In the various positions that the mobile unit has been documented in, it doesn't appear to have been sited at the furthest possible point within the car park from the closest neighbouring properties. However, nor is it (for the most part) directly adjacent to those properties. Nevertheless, its operation within the car park would be during times of the day when the club may not be expected to be at its busiest. I accept therefore that whilst the club may be open during the day, for at least some days during the week, the nature of operation of the mobile catering unit would be likely to generate additional traffic movements where there may be none, or only limited, such movements associated with the club operation itself.
22. My visit to the site was relatively early in the day, albeit still within the catering unit's indicated opening hours. Although in the course of preparing for the day's cooking and sales during that time, there were no patrons visiting the site, or food orders collected. Nevertheless, the activity of cooking associated with an HFTA can give rise to noise, mostly from extraction systems. However, in this instance, there was no visible extraction system evident within the mobile catering unit. Other than the serving hatch and a stable-style door on one end of the unit, there appeared to be no other openings.
23. It seems to me therefore, that it is unlikely that the operation of the mobile catering unit itself for cooking would give rise to levels of noise likely to lead to disturbance of occupiers of neighbouring properties. The orientation of the unit as it was at the time of my visit, and the relative distance from the closest points of the neighbouring receptors lends weight to my conclusions in this respect.
24. However, from the photographic and written evidence submitted by objectors, it is instead the comings and goings associated with the operation of the mobile catering unit, most notably from patrons coming to buy food, parking and then

consuming it on-site, but also from those just collecting and leaving, that appear to cause the greatest concern to neighbouring residents. But this raises some difficulties in assessing the effects of these movements in the context of an existing car park for an existing and established business where the comings and goings of cars is commonplace and should not be unexpected.

25. Nevertheless, it seems that from photographic evidence collated by neighbours that there may be periods during the day when the car park is busier than might otherwise be expected just through the operation of the club. It also appears from that evidence that some of those present either within their cars or sitting on structures within the car park, are consuming food. I am invited to conclude that those consuming food have purchased it from the mobile catering unit.
26. The presence of the catering van is therefore likely to attract patrons whether to order and eat on-site, order and takeaway or to collect pre-ordered food. It is inevitable that there will be a degree of associated waiting and congregation associated with each of these activities, albeit to varying degrees. These are patterns of activity that are likely to differ from the use of the car park to provide car parking for patrons of the club itself in terms of both congregation and lingering.
27. Furthermore, given the proximity of the mobile catering unit to, particularly, No. 15 and the layout of the car park and access, it is likely that these effects are more likely to be felt, and more keenly so, by occupiers of that property. Views whilst parking, waiting and consuming food, whether outdoors or in a vehicle from these areas are inevitably towards the rear of No. 15. Whilst there is a substantial fence between the car park and this property which intercepts views from ground level, customers are likely to look, even if unintentionally, towards the rear elevation and upper floor of No 15. Moreover, these areas are also directly adjacent to the rear garden and outside space of No. 15 where the associated noise and chatter of patrons, or idling vehicles, would be particularly disruptive to the enjoyment and use of this outside space. Such incidences are less likely to occur where patrons of the club are parking and moving between the car park and the club where the prime purpose is movement from one to the other, rather than a more lingering experience if waiting for food, or eating it. As a consequence, the occupiers of No 15 are likely to feel uncomfortably exposed to the noise of comings and goings associated with the operation of the mobile catering business and also exposed to overlooking and a loss of privacy, however unintentional that may be.
28. Quarry House is located to the rear of the appeal site car park, its ground floor and garden patio levels immediately adjacent to the house itself being at a lower level than that of the car park. Depending upon the exact location and orientation of the catering unit, I was able to appreciate how this property might be affected by the factors and circumstances outlined above in respect of No. 15. For those patrons who chose not to park or wait on Rowley Bank, the location of the catering unit was such as to bring those parking, waiting and potentially congregating close to the rear of Quarry House.
29. As with No. 15, it is quite likely, even though perhaps unintentionally, that those in this area may be drawn to looking towards this property, its rear elevation and its windows. As is also the case with No. 15, a fence intercepts views from ground level within the site, but the limited distances between this

area and the rear of Quarry House being as they are are likely to result in the uncomfortable overlooking of that property, together with the effects of proximity in relation to the parking, manoeuvring and idling of vehicles, and the comings and goings associated with patrons accessing the mobile catering unit. As set out in relation to No. 15, I am satisfied that this pattern of movement and combination of factors are such that they are materially different from that which might be expected in relation to the operation of the car park as a car park for the club itself.

30. CDP Policy 29 requires, amongst other things, that development proposals provide high standards of amenity and privacy and minimise the impact of development upon occupants of existing adjacent and nearby residential properties. CDP Policy 31 sets out the Council's approach to amenity and pollution, stating that developments will not be permitted where they would lead to, amongst other things, inappropriate odours, especially where any identified mitigation cannot reduce the effect on people's amenity to an acceptable level.
31. The appellant's business is subject to an ongoing abatement notice under section 79 of the Environmental Protection Act 1990⁷ in relation to odours. Whilst it appears from correspondence with the Council provided by the appellants that the most recent assessment confirmed that the odours generated weren't sufficient to constitute a statutory nuisance they were nevertheless described as being detectable at neighbouring residential properties. That cooking odours were detectable I do not find difficult to believe.
32. The mobile catering unit is not a substantial vehicle and it did not appear, at least at the time of my visit to the site, to have any means of mechanical extraction or filtration equipment within it. However, the van's location has changed on a number of occasions within the car park and, at the time of my visit at least, its largest opening (the serving hatch) was facing away from the closest neighbouring properties. Nevertheless, the site lies in an exposed location and the nearest properties are sufficiently close that there is limited chance for odours to fully disperse, particularly in respect of towards 15 Rowley Bank where prevailing winds and buildings may be prone to funnel any odours towards that receptor.
33. Moreover, given the layout of the residential garden plots of No. 15 and Quarry House, the outdoor areas associated are close to the van's current location. Whilst the detectable odours noted at these residential properties may not be sufficient currently to constitute a statutory nuisance, that is not to say that they are not capable of adversely affecting the residential amenity and enjoyment of these properties and their gardens. The evidence, as expressed by nearby residents, is that this has been, and indeed still is, the case. Whilst the appellants have taken some measures to lessen any such impact (such as through the precise location of the van), the nature of the mobile catering unit is such that it strikes me as almost inevitable that cooking odours would be experienced at these properties at times. Nor is it reasonable to expect that local residents should not be able to benefit from open windows or doors without harm when weather conditions encourage their opening.

⁷ As per forwarded e-mail (dated 28 October 2023) from the Council's Principal Public Protection Officer (e-mail dated 25 October 2023)

34. I accept that there may be instances where there might be some tension arising from the operation of commercial premises and the residential amenity enjoyed at nearby residential properties. I accept too, that it is likely that the club itself has been present and operational longer than the closest and most directly affected residential properties have been present. Nevertheless, the siting and operation of a mobile catering unit in the car park has not been, and whilst I have no information before me as to the club's catering offer, it has not been demonstrated that the mobile catering unit has, or could be fitted with, sufficient measures to control and limit catering odours sufficiently so as to provide the high standards of amenity that CDP Policies 29 and 31 seek to secure. Additionally, the nature and pattern of visits to the mobile catering unit in terms of movements, timings, noise and disturbance and linger-time associated with ordering, waiting, collecting or eating food would materially differ from the operation of the car park purely to serve patrons of the club. For these reasons, the appeal scheme fails to accord with CDP Policies 29 and 31.

Highway safety

35. Access to the appeal site is taken from the A68 Rowley Bank via a reasonably wide junction and access leading to the main body of the car park at the rear of the building. Whilst the local Highways Authority has expressed concern about the suitability of the access and car park in being able to accommodate the access, egress and manoeuvring of larger commercial traffic and heavy good vehicles, there is evidence that the club is already serviced by such vehicles from the car park at the rear. Moreover, given the available space within the car park and access for manoeuvring it seems to me that, notwithstanding the photographic evidence of drivers and occupants of large commercial vehicles waiting for, or consuming food, purchased from the mobile catering unit, that sufficient space exists within the site commensurate with the likely levels of activity associated with it.
36. It may be that some of these vehicles are associated with the normal activities of the club. For example, deliveries from the club's brewery or the collection of commercial waste, the wheeled containers for which were, at the time of my visit to the site, located to the rear of the building and accessed from the car park. However, the appellant has confirmed that others are unrelated to the club's operation and can sometimes, but not always, be patrons and customers of the mobile catering unit. I have no detail before me of the club's policy on access to the car park and parking therein and so I have no compelling reason to doubt the appellant's claim that these vehicles can also occasionally be parked up within the car park when the appellant's business is not operating.
37. Nevertheless, an inappropriately or inconsiderately parked larger vehicle in, particularly but not limited to, the access between Rowley Bank and the main part of the car park could cause difficulties for similar vehicles entering the site, should their visits coincide. This may also have the effect of impeding vehicles turning into the site and displacing activity from the car park and access on to Rowley Bank itself. Similarly, the examples of those pictured parked on Rowley Bank itself can impede visibility along Rowley Bank for other vehicles turning into / exiting the site and restrict access to nearby residential properties.
38. However, there are no parking restrictions immediately outside the site. Whilst there are double yellow lines a short distance to the north, closer to the crossroads junction, the road is generally straight, visibility is good and with a

speed limit through the settlement of 30mph traffic speed should not be excessively fast. However, with houses lining both sides of the road, pavement and half pavement / half on-road parking is not uncommon, be that by residents or patrons of the club or mobile catering unit. Although the local Highways Authority objected to the proposal, the Council's officer report appears to suggest that a suitable 'service and delivery plan' could demonstrate how the site could operate safely. The third reason for refusal also reflects this approach. The appellants claim that they were not aware of this request but, should the appeal succeed, it seems to me that there is sufficient space within the site to enable such matters and provision to be explored.

39. However, whilst inconsiderate parking is just that, there are no other restrictions on the parking of vehicles on this stretch of road. Nor is it beyond the realms of possibility that large commercial vehicles may choose to pull up in this location even at times when the mobile catering unit is not operating. Equally, I accept that there are likely to be times when the presence of an open mobile catering unit would provide an attraction to passing motorists, whether or not they are from the local area, and that may lead to concentrations of vehicles parking within the site, or on the roadside. Nevertheless, should the appeal succeed, I am satisfied that a suitably worded condition regarding a service and delivery plan could provide mitigation for the management of patron's vehicles. Such an approach would be consistent with the aims and provisions of CDP Policies 21 and 29 which seek to ensure that the transport implications of development must be addressed and traffic generated safely accommodated on the local highway network. Subject to a suitably worded condition there would therefore be no conflict with CDP Policies 21 and 29.

Other Matters

40. It is clear that there is considerable ill-feeling between the occupiers of neighbouring properties and the appellants. Neighbours have referred to a range of other issues and concerns such as alleged instances of anti-social behaviour and the previously itinerant nature of the appellant's business, but these and others do not add to my findings of harm as set out above.
41. It would be difficult to say that persons allegedly urinating or vomiting around the appeal site's perimeter are as a direct result of the appeal business, particularly given the recent operating hours as stated by the appellant and proposed under the Appeal C scheme. There is no desire to stymie a local business, nor should my decision be taken to suggest that the cleanliness and hygiene of the appellant's business is in question, or that those issues lie behind any cooking odours arising from the mobile catering unit. Whilst the absence of other food outlets within Castleside is noted, this does not justify the harm that I have identified or otherwise persuade me as to the acceptability of the appeal scheme.
42. The proportion of objections to those notified of the planning application and appeals carries no weight in the consideration of the appeals and appeal scheme. Nor does the nature of the businesses conducted by those who have objected to the appeal scheme. I have noted the petitions submitted by the appellants in support of the appeal scheme, but I have determined the appeals on the basis of the evidence before me and on the planning merits of the appeal scheme.

43. I am also conscious of the considerable variations in opening times referred to by the various parties, including late night opening. However, the appellant's proposed opening hours are clearly set out in the planning application and could be controlled by planning condition should the appeal succeed. Those proposed opening hours are also what my consideration of the matter has been based upon. I am also mindful of these opening hours in the context of comments received regarding the business providing a focal point for the congregation of youths and younger customers.

Conclusions on Appeal C

44. All other matters raised have been considered, including noting the appellants' work with the Council's licensing and environmental health teams. Whilst I conclude that a suitably worded condition could be capable of adequately addressing concerns over the establishment and maintenance of a convenient and safe access / egress and parking plan for the site, this is not sufficient to overcome the harm that I have identified in terms of the appeal scheme's location and effect on the living conditions of occupiers of neighbouring residential properties. The appeal scheme does not therefore accord with the aims and provisions of CDP Policies 29, 30 and 31, or the Framework, in these respects.

Overall Conclusion

45. For the reasons given above, I conclude that Appeals A and B should not succeed and I shall uphold the notice accordingly. For the reasons also set out above, and having considered all other matters raised, I conclude that Appeal C should be dismissed.

G Robbie

INSPECTOR