



Appeal Decision

Site visit made on 24 September 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2024

Appeal Ref: APP/P4605/W/23/3335710

156 High Street, Harborne, Birmingham B17 9PN

- 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 Rai of Axios Building Consultants Limited against the decision of Birmingham City Council.
 - The application Ref is 2022/04599/PA.
 - The development is installation of a kitchen extraction system and flue to rear of property, conversion from retail to restaurant and gourmet takeaway. Replacing shop front and signage.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The development has already been implemented and appears to have been done so in accordance with the submitted plans.

Main Issues

3. The Council's reasons for refusal relate only to the extraction system, therefore the main issues relevant to this appeal are:
 - the effect of the extraction system upon the character and appearance of the area including its effect upon the significance of the nearby Greenfield Road Conservation Area, a designated heritage asset, through development within its setting; and
 - the effect of the extraction system upon the living conditions of the occupiers of the neighbouring dwellings with regard to noise and odour.

Reasons

Character and Appearance and the Greenfield Road Conservation Area

4. The appeal site is a mid-terrace building fronting High Street. To the rear are streets of terraced housing which fall within the Greenfield Road Conservation Area (CA). The boundary of the CA follows the rear boundary of the appeal site and neighbouring buildings. Thus, while the appeal site is not within the CA it does fall within its setting.
5. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Although

the setting of a Conservation Area is not protected by statute, the same considerations will apply as a matter of policy in terms of assessing the effect on significance.

6. I have not been provided with detailed analysis of the CA, but from my observations, the CA has an attractive suburban character which ranges from the close grain of terrace houses found at Bull Street and South Street next to the appeal site, to the spacious plots of the larger houses on St Mary's Road. The significance of the CA comes from the wide variety of architectural styles and the generally consistent use of red bricks and tiled roofs. The residential appearance of the buildings within the CA also forms part of the significance of the suburban character of the CA.
7. The extraction flue system is a substantial addition to the appeal building and extends along the roof of the ground floor rear addition of the building and up the rear wall and the rear dormer window and above the roof of No 156. From High Street, the extraction flue system is relatively well screened from public viewpoints by the building and even from the roads within the CA it is well screened.
8. However, the significance of the CA comes not just from what can be seen from public viewpoints but from how the CA is experienced as a whole, including from other buildings within it. The roof profile of the buildings along High Street is consistent with the houses along South Street and Bull Street with limited external alterations to those buildings to indicate they are in commercial uses. As a result, the residential appearance of those buildings and the consistent use of materials replicates the suburban character of the CA and makes a positive contribution towards its significance.
9. From the rear of the houses along Bull Street and South Street the extraction flue system is a significant addition to the rear of the buildings along High Street. Given the scale of it and its utilitarian appearance the extraction flue system appears discordant alongside the other buildings on High Street and erodes the suburban character that is appreciated from the rear of the houses along Bull Street and South Street. This harms this positive characteristic of the area that forms part of the significance of the CA and thus harms the setting of it.
10. Paragraph 205 of the Framework advises that, when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to say that any harm to, or loss of, the significance of a designated heritage asset from development within its setting should require clear and convincing justification.
11. In this case, the harm would be less than substantial but nevertheless of considerable importance and weight. In these circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
12. The development generates both short term and long-term economic benefits as well as environmental benefits through the redevelopment and reuse of an existing building and I give these benefits modest weight in favour of the scheme, despite the limited scale of it. The Framework makes it clear that great weight needs to be given to the designated heritage assets conservation.

Overall, I do not find that the public benefits of the proposal outweigh the harm that would be caused to the significance of the setting of the CA.

13. Consequently, the extraction system harms the character and appearance of the area and does not preserve the character or appearance of the setting of the CA. The development, therefore, conflicts with Policies PG3 and TP12 of the Birmingham Development Plan (BDP), 2017 and Policy DM2 of the Development Management in Birmingham Development Plan Document (DMB), 2021. These seek, amongst other matters, to ensure great weight will be given to the conservation of the City's heritage assets. It also does not accord with the Framework for the reasons given above.

Living Conditions

14. The site is located within a promenade of shops in a Primary Shopping Area but to the rear of these commercial units are residential dwellings, as well as residential uses within the upper storeys of the buildings along High Street. The extraction flue system has been installed on the rear elevation of the appeal building and an extractor fan is located close to a rear dormer window within the roof of the building as well as another located close to the gardens of the houses on Bull Street and South Street. As a result, there are a number of sensitive receptors nearby that the noise and odour produced by the extraction flue system could affect.
15. The Council has identified concerns with the evidence submitted and considers the appellant has failed to demonstrate that the extraction flue system to the rear would not lead to adverse impacts on the living conditions of the occupiers of residential units in the vicinity by reason of noise and odour.
16. Whilst it would normally be preferable that details are provided before any grant of planning permission, the Framework and the Planning Practice Guidance indicate that it is appropriate to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
17. The submitted Noise Impact Assessment Report acknowledges that there would be noise and disturbance from the extraction flue system but has identified recommendations that would seek to address said disturbances. Having visited a neighbouring dwelling, there was a continuous background noise from the extraction flue system which, over a period of time, would cause detrimental disturbances to the nearby occupiers. Based on the evidence before me and my observations on site, I cannot be certain that the recommendations in the Noise Impact Assessment Report have been implemented. However, in these circumstances, I am satisfied that matters related to noise could be satisfactorily addressed by means of appropriately worded conditions to determine the adequacy and effectiveness of the mitigation measures.
18. Comments were received from interested parties regarding the odour produced from the extraction system and having appreciated this from a neighbouring property, the constant background odour produced by the system when operational throughout the day has an adverse impact on the neighbouring occupiers living conditions. I have no robust evidence that mitigation measures could suitably address concerns with the odour the extraction system produces. Without said evidence I am not satisfied that this matter could be suitably addressed by conditions.

19. Consequently, through the use of appropriately worded conditions, the extraction system would not cause unacceptable harm to the living conditions of the occupiers of the neighbouring dwellings with regard to noise. However, I am not satisfied that matters relating to odour could be addressed and thus the odour produced by the extraction system causes harm to the living conditions of the neighbouring occupants. As a result, the development would conflict with Policy PG3 of the BDP and Policies DM2 and DM6 of the DMB which seek, amongst other matters, to ensure development will not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. It would also not accord with the Framework insofar as it seeks to ensure development creates places with a high standard of amenity for existing and future users.

Planning Balance

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
21. The development supports a commercial operation that provides both short term and long-term economic benefits. There have also been environmental benefits through the redevelopment and reuse of an existing building. The Framework identifies that decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth and this scheme does support this aim. Despite the limited scale of the development, I attribute modest weight to these benefits.
22. I have found that, subject to appropriate conditions, the development would not cause unacceptable harm to the living conditions of the neighbouring occupiers with regard to noise. However, the odour produced by the extraction system does harm their living conditions. Furthermore, the identified harm to the setting of the designated heritage asset and the great weight attached to said harm, alongside the other identified harm, leads to a conflict with policies in the development plan. This is a conflict with the development plan as a whole. Overall, the benefits that arise from this development do not outweigh the identified harms.

Conclusion

23. The development conflicts with the development plan and the material considerations do not indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR