



Appeal Decision

Site visit made on 2 January 2025

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/Q3060/W/24/3353613
196 Sneinton Dale, Nottingham NG2 4HJ

- 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 Umar Mehrban against the decision of Nottingham City Council.
 - The application Ref is 24/00288/PFUL3 (PP-12777466).
 - The development proposed is Change of use from Use Class E to restaurant and takeaway (mixed use Class E and sui generis). Installation of flue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the original application a revised National Planning Policy Framework (the Framework) was published on 12 December 2024. However, as the parts most relevant to this appeal have not changed, I consider it has not been necessary to consult the parties on the revised Framework and no parties have been prejudiced by this approach.
3. As part of the appeal an amended drawing was submitted. This has corrected the proposed view from side elevation 1 from the plan originally submitted. As no amendments have been made to the positioning, height or form of the flue I have accepted this plan and consider no parties interests have been prejudiced by taking this approach.
4. For clarity the description of development has been taken from the decision notice, which has also been used on the appeal form as this more accurately describes the proposal.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the host property and area; and
 - the effect of the change of use on the living conditions of nearby residents, with particular regard to noise, disturbance and anti-social behaviour.

Reasons

Character and appearance

6. The appeal site is a unit within a three-storey purpose built mixed commercial and residential development fronting Sneinton Dale, a busy through-road. The ground floor of the building has commercial premises, with residential use on the two floors above. Further commercial premises and food takeaway units are located across the road from the appeal site. The rear of the appeal building is accessed and visible from Hardstaff Road, a residential street.
7. Despite the use of the same bricks, there is a functional and architectural distinction between the commercial premises located on the ground floor of the appeal building and the residential properties above. The rear elevation has been designed so that the first floor is set back from the ground floor, creating an outdoor terrace for the residents, accessed via patio doors, where I observed associated residential paraphernalia. The rear elevation at the first and second floor exhibits a pleasing architectural uniformity and rhythm between the properties, with no external large flues present.
8. As the appeal property follows the alignment of Sneinton Dale, appearing at an angle off Hardstaff Road, and has a service yard at the rear of the commercial units, the rear elevations of the residential properties on the first and second floors of the appeal building are highly visible from Hardstaff Road.
9. The proposed metal flue would be of a substantial width and height, considerably bulkier than any existing vertical features within the immediate streetscene, such as lampposts and telegraph poles. The flue would protrude through the floor of the outdoor terrace serving the residential property above and would be positioned directly between a window and patio doors, projecting above the eaves of the appeal building.
10. Given the appearance and proposed location of the flue, it would appear as a substantial and utilitarian addition to the appeal building and an intrusive, bulky and alien feature, at odds with the residential character of Hardstaff Road and the first and second floor of the host property against which it would be primarily viewed. It would also harmfully disrupt the existing uniformity and rhythm of the rear elevation of the residential properties, where no such flues currently exist.
11. I note that part of the flue would be obscured by built form when viewed from the part of Hardstaff Road closest to Sneinton Dale, and that the appellant has suggested the flue could be painted an appropriate colour to reduce the visual impact of the flue. However, given the open nature of the rear of the appeal site, these factors would not sufficiently mitigate against the identified harm. Whilst Hardstaff Road may not be a major through road, this is not sufficient justification to allow the addition of a feature which I have found would cause significant visual harm.
12. The appellant has drawn my attention to other extraction flues at the rear of properties in close proximity to the appeal site, which I observed on my site visit. However, these flues are predominantly located on the opposite side of Sneinton Dale and are not visible from the residential street of Hardstaff Road. Moreover, their presence is not as conspicuous as the proposal before me, those properties and associated flues are lower in height and the rear of those

properties are not as open due to the closer proximity of surrounding buildings. I therefore do not find those flues comparable to the scheme before me.

13. For the reasons above, the proposal would have a significant adverse effect on the character and appearance of the host property and area. It would thus conflict with Policy 10 of the Greater Nottingham Aligned Core Strategies Part 1 Local Plan (2014) (ACS) which, amongst other matters, requires new development to make a positive contribution to the public realm and Policies DE1 and DE2 of the Nottingham City Land and Planning Policies Development Plan Document Local Plan Part 2 (2020) (LAPP) which, amongst other matters, requires proposals to respect and enhance the streetscape and contribute to the creation of an attractive public realm, reinforce positive local characteristics and respect the local context.

Living conditions

14. Whilst the host property is not formally located in the defined Local Shopping Centre of Sneinton Dale, as defined by the LAPP, the Council accept that given the location of the host building, opposite and adjacent existing commercial premises, it effectively forms part of the Local Shopping Centre. From what I observed on site, I would concur with this.
15. When planning permission was granted in 2013 for the host property in which the appeal unit is located, the Council states that the committee report advised that future changes of use to food and drink uses would not be considered favourably. This was because of concerns about the number of hot food uses in the Local Shopping Centre and associated amenity and anti-social behaviour issues. The Council are thus concerned that on its own and cumulatively with the other hot food uses the proposal would be likely to lead to noise and disturbance to the detriment of local residents.
16. I note the concerns from residents and ward-councillors who consider that Sneinton Dale is over provided with food and drink uses. Whilst I observed several such uses within the local centre, these were dispersed amongst other uses and spread throughout the local centre, thus I do not consider there is an over concentration. Furthermore, I have not been presented with any local plan policy restricting the numbers of food and drink premises based on proximity to and/or numbers of such uses within a specific centre.
17. I accept that some noise would arise from customers and their vehicles when visiting and leaving the appeal site. However, given the appeal site's proximity to the main road and range of commercial uses that extend into the late evening, along with associated comings and goings, it is thus inevitable that noise from traffic and the nearby commercial premises form part of the normal background noise for many local residents, such as engines starting, car doors closing, customers walking to and from premises and commercial bins being emptied. The change of use is proposed to operate until 2330 hours throughout the week. This would be an earlier closing time than those allowed at other nearby premises and the opening hours could be conditioned. Moreover, I note the appellant has suggested they would be open to further reducing the opening hours if considered necessary.

18. Taking the above points together, I consider that any increased noise or disturbance from the proposed takeaway and restaurant would not cause demonstrable harm to the living conditions of nearby residents over and above the existing situation. In coming to this view, I am also mindful that no substantive evidence has been provided, for example police reports or crime statistics, which would indicate that the existing surrounding food premises have given rise to unacceptable impacts on nearby residents in terms of any adverse noise, disturbance or anti-social behaviour.
19. Although not specifically referenced in the reason for refusal, interested parties have raised concerns regarding the ventilation system and odour. A detailed ventilation and extraction statement has been submitted with the appeal confirming that the noise emitted from any new plant shall be lower than the existing background noise. There is also no firm evidence to suggest that the proposed extraction system would not be sufficient to control odour. Suitably worded conditions would provide adequate safeguards in relation to this.
20. Concern has been raised that littering is already an issue in the area and that it could lead to a rat infestation. I observed numerous litter bins in the vicinity of the appeal site and at the time of my visit, although only a snapshot in time, the area appeared tidy. Whilst I sympathise with the residents, I have no substantive evidence before me to indicate that the proposed change of use would result in any increased littering. However, should such anti-social behaviour occur, powers and regulations exist beyond the planning system to deal with such issues. Furthermore, the potential for rats to be attracted is a concern with any food use, but is subject to appropriate control under public health legislation in any event.
21. For the reasons above, and based on the evidence before me, I do not consider the change of use would harmfully impact the living conditions of nearby residents with regard to noise, disturbance and anti-social behaviour. As such, the proposal would comply with Policies LS1 and DE1 of the LAPP which, amongst other matters, seeks to prevent such harm. It would also accord with Policy 10 of the ACS in so far as it seeks to ensure development creates a safe, inclusive and healthy environment and to consider the effect on the living conditions of nearby residents.

Other Matters

22. I observed lots of on-street parking within the area, albeit there was some restrictions on streets nearby. There is nothing before me to indicate high levels of parking would result from the proposal or that customers would park in such a way that would result in any significant highway safety concerns. However, as I am dismissing the appeal for other reasons, there has been no need to consider the issue of parking further.
23. I have had regard to the benefits of bring a vacant property back into use. However, limited evidence has been provided to suggest that the proposed use is the only means by which the premises could be brought back into use. I also acknowledge that it would create jobs, albeit limited in numbers. This weighs in favour of the scheme. However, such matters would not be sufficient to outweigh the harm identified.

Conclusion

24. For the reasons given above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

T Bennett

INSPECTOR