



Appeal Decision

Site visit made on 19 February 2025

by **Anne Jordan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/M4510/W/24/3346231

1 Nun Street, NEWCASTLE UPON TYNE, NE1 5AG

- 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 SHAWERMERZ against the decision of Newcastle Upon Tyne City Council.
 - The application Ref is 2024/0370/01/DET.
 - The development proposed is described as “Retention of existing mixed use for both hot and cold food to takeaway, delivery and eat on premises; retention of canopy and duct extraction system terminating at ceiling level at ground floor with associated louvre vent to south-west shop-frontage elevation; retention of internal duct extraction system terminating vertically at roof level; retention of internal layout alterations to allow for creation of seating and new kitchen area and other alterations; retention of external alterations including new glazing, re-painting and internal boxed roller shutters; retention of two non-illuminated fascia adverts above shop frontage on south-west and north-west elevations made of black plastic/acrylic individual letters wall-mounted each stating 'SHAWERMERZ'; and, 4x plastic sheet columns adverts (70cms x 30cms) at eye level to south-west and north-west elevations (currently removed, proposed to be reinstated).”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal property lies within the Newcastle Central Conservation Area. It is a Grade I listed building. An application was made to the council for both listed building consent and planning permission. However, the appeal relates only to planning permission, with no associated listed building appeal.
3. The description of development includes advertisements. Advertisements are subject to a different consent process and cannot be approved through an application for planning permission. This element of the application is therefore not before me as part of this appeal. Should listed building consent be granted for the display of the advertisements, alongside any necessary advertisement consent, then planning permission would be deemed to be granted for any development of land involved in the display of advertisements in accordance with the Regulations.
4. The description of development refers to “retention”, however, retention is not an act of development. Some of the works proposed were carried out by the previous occupier of the property and will therefore have been in place for some time. However, whilst in some cases development can become lawful after a specified period of time, such provisions do not apply to works which require listed building consent.
5. The appellant contends that the current use is lawful but has nonetheless applied for planning permission. The building owner has confirmed that the building was

previously in use as a pork butchers which sold some hot food for takeaway. The use as taking place on site comprises a mix of hot food for takeaway with some consumption on the premises. It therefore appears to me that the use constitutes a material change of use from Use Class A1 (now Class E (a)) to a Sui Generis use. Accordingly, I give no weight as a fallback to the appellant's argument that the use is lawful.

6. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have therefore dealt with the appeal for planning permission on that basis.

Main Issues

7. Accordingly, the main issues for the appeal are:
 - The effects of the proposal on heritage assets, in particular, whether the proposal would preserve the special interest of the Grade I asset known as South Front of Grainger Market and whether the proposal would preserve or enhance the character or appearance of the Central Conservation Area,
 - The effects of the proposal on the amenity of local residents.

Reasons

Heritage Assets

8. The appeal property is part of the Grade I listed asset that makes up the south front of Grainger Market. It is a corner unit so has both a southern and western façade. The Grainger Market was constructed by John Dobson for Richard Grainger in 1835. The market has historical significance as part of the 19th Century reconstruction of central Newcastle in which it formed and continues to be an important commercial centre. It was constructed as part of a set piece in the classical style with strong symmetry evident on the upper floors. Its significance lies in part in its historic associations, in the visual contribution the building makes to the area and as a well-preserved example of a civic building of the period.
9. At ground floor, below the cornice, various pubs and shops now sit alongside the entrances to the market. Despite some loss of uniformity at street level, those shopfronts that integrate most successfully to some extent seek to replicate elements that are consistent with the period in which the building was constructed. In particular, glazing is generally provided in panels or panes and the frontage is broken up with timber or stone stallraisers.
10. The appeal property projects forward of its neighbours, emphasised by the use of ornate pilasters on the upper levels. The shop front retains the original columns at ground floor but includes large picture windows on both the south and western elevations. Although these are recessed behind the columns they nonetheless create a large void that sits uncomfortably in a façade where the regular spacing of openings and the measured proportions of solid to void are an integral part of the buildings character. Whilst I accept that the alterations will have been made some time ago, and are not the only examples of unsympathetically contemporary shopfront alterations in the area, the extent of glazing appears obtrusive and

erodes the historic character of the building. The visual harm is compounded by the inclusion of the unsightly extraction vent, and the utilitarian housing for the shutter box and blind on both elevations. This is evident in views along both Clayton Street and Nun Street due to the corner position of the unit and in this respect the development also has an adverse effect on the character of the Central Conservation Area.

11. The harm that would arise to the appearance of the heritage asset would cause harm to the special interest of the listed building and so to its significance. The level of harm caused to the significance of the heritage asset would be less than substantial. The National Planning Policy Framework (the Framework) directs that when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. I therefore attribute considerable importance and weight to this harm, which the Framework also indicates should be weighed against the public benefits of the scheme.
12. The business will bring local employment, and the occupation of the building will help contribute to the vitality of the area. These are benefits to which I contribute some significant weight. However, I have no evidence that a business could not operate from the building without implementing a shopfront design which would not cause harm to the listed building and Conservation Area and this diminishes the weight I attribute to these benefits in this case.
13. Accordingly, the public benefits of the scheme would not outweigh the harm identified to heritage assets. It follows that the proposal would fail to comply with national policy outlined in the Framework which seeks to conserve heritage assets in a manner appropriate to their significance.

Amenity

14. The property lies within a commercial area with hot food takeaways and public houses adjacent to and opposite to the site. As such, nighttime activity will be an established part of the character of the area. The property above the appeal building is in office use. The application proposed 24-hour opening of the premises. At appeal the appellant has advised that a planning condition restricting opening hours but allowing late night opening to weekends would be appropriate. Having regard to the hours of opening of the Burger King opposite the site, which allows opening to midnight and 1.00am on Friday and Saturday, I see no reason why a similar pattern of opening at the appeal site would harm the amenity of residents.
15. The use involves the preparation of hot food. Although there are currently no residential occupiers directly above the property, it is likely that there will be residential occupiers on the upper levels of some of the adjacent properties. An existing system is being used at the site, which has an external vent within a window venting onto the public highway. The Council have advised that high level abstraction will be required to protect residents from odour, and I agree that as the use could involve the continuous preparation of hot food, such a system would be necessary to prevent odour in the public domain and to protect residential amenity.
16. No details of the extraction system have been submitted to support the application other than screen shots of the front of the property from Google Street view. I am therefore not assured that the system in place on site is sufficient to adequately

prevent odour. I am conscious that the proposed use is likely to be more intensive than the previous use which was one of a butchers shop with some food preparation on site. Based on the information put to me I am unable to assured that the use of the existing extraction system would not cause nuisance through the emission of odours.

17. The Council have also referred to the potential impact of the extraction system on residential occupiers by way of vibration. As there are no residential occupiers above I consider this to be unlikely. Nonetheless, it is important that the proposal demonstrates that it provides appropriate extraction and ventilation, that meets the needs of the proposed business. Whilst I note that the Council may not have historically required high level abstraction at other similar premises in the area, as put to me by the appellant, I am not assured that the two cases are comparable, and in any case, do not consider that the matter diminishes the need to protect amenity in this case.
18. The Council have referred to a number of development plan policies. Of those put to me I find policies DM23 and DM24 of the Newcastle upon Tyne Development and Allocations Plan to be most relevant. The proposal would fail to comply with the requirement within these policies amenity from impacts arising from odour. It would also fail to comply with guidance in the Framework which has similar aims.

Other Matters

19. Waste storage is currently provided via a bin on the pavement outside the property. Policy DM34 seeks to ensure that appropriate waste storage facilities are provided as an integral part of any development. Although the waste storage arrangements have not changed from those undertaken by the previous business at the property, the Council have sought to address this matter as new developments come forward.
20. The appellant advises that an external bin is used by the business. I noted during my visit to the site that the multiple bins that sat outside the property were an unsightly and detracting feature in the street scene and I consider it reasonable that the Council seek to address this.
21. Although my attention is drawn to the difficulties the appellant has had in securing the agreement of the Council run market to assist in shared waste storage and collection arrangements neither party has suggested that an alternative arrangement to street collection is not possible either within the building itself or as part of an arrangement with another property nearby. The Council have suggested that space be provided within the property alongside more frequent collections. Be that as it may, it seems to me that this or another arrangement that would accord with the aims of policy DM34, could be secured by means of a condition if the scheme was otherwise acceptable and so this matter does not add to my concerns.

Conclusion

22. The proposal would cause harm to the significance of heritage assets and would cause harm to public amenity as a result of fumes and odour arising from the development. The benefits of the scheme, through support for the local economy and vitality would not outweigh this harm.

23. Accordingly, having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR