



Appeal Decision

Site visit made on 4 March 2025

by **N Teasdale BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th March 2025

Appeal Ref: APP/M4510/W/24/3353962

173-175 Chillingham Road, Newcastle Upon Tyne NE6 5XN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
 - The appeal is made by Mr Sonny Gill (Gills Fish and Chips) against the decision of Newcastle Upon Tyne City Council.
 - The application Ref is 2024/0051/01/DET.
 - The development proposed is described as, *'first floor change of use from Sui Generis to HMO (Use Class C4 - 1 x 5 Bedroom) with attic conversion to create three bedrooms with bathroom. Reinstate original windows to front elevation to match neighbouring properties. Create two conservation roof lights to the front elevation and one to the rear. Create rear external staircase for HMO with bike store and refuse storage area. Ground floor main unit to remain as current use class Sui Generis'*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the above banner heading has been taken from the original application form. The Council's decision notice includes insertion of 4 no roof lights to the front and rear and retrospective installation of 2 no. air conditioning units on flat roof to rear. The rooflights are shown on the proposed plans and these have been taken into account in reaching my decision. I understand that the 2 air conditioning units have been removed from the site and placed inside of the property and I was not able to see any in situ at my site visit. The appellant has submitted a number of plans with this appeal which removes the air conditioning units from the scheme entirely and given the nature of the change, I do not find my acceptance of these plans to be prejudicial to any party. The 2 air conditioning units do not therefore form part of this appeal and thus I do not need to consider this matter further.
3. An update to the National Planning Policy Framework (the Framework) has been published dated 12 December 2024 but there are no material changes relevant to the substance of the appeal.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the living conditions of existing surrounding residential land users and future residential occupiers of the appeal site with particular regard to noise disturbance and health;

- The effect of the proposed development on the living conditions of existing occupiers of No 177 Chillingham Road (No 177), No 88 and No 90 Rothbury Terrace (88 and 90) with particular regard to privacy; and
- The effect of the proposed development on highway safety.

Reasons

Living conditions – noise disturbance and health

5. The appeal site comprises a two-storey commercial property located along Chillingham Road in Newcastle Upon Tyne. It forms part of a row of terraced properties which front onto Chillingham Road to the east with their rear elevations and amenity space extending westwards. The appeal site is located close to the junction where the access lane serving the rear of the properties along Rothbury Terrace (to the northwest) and Meldon Terrace (to the south) meets Chillingham Road. The appeal site benefits from a two-storey rear offshoot and a large flat roof single storey rear extension that covers most of the rear yard area at ground floor, except for a narrow alleyway providing pedestrian access to the rear access lane to the south. Both ground and first floors are within the Sui Generis Use Class with the ground floor operating as a hot food takeaway with the first floor not being accessible, as the internal staircase has been removed. Adjoined to the north is No 177 and 179 Chillingham Road which features a ground floor commercial property and residential flat at first floor level. Adjoined to the south is No 169 and 171 Chillingham Road, a two-storey property featuring a hot food takeaway at ground floor with the first floor falling within the Sui Generis Use Class. Further south and beyond the rear access lane are residential properties along Meldon Terrace and to the rear/west of the appeal site are residential properties along Rothbury Terrace.
6. The proposed development seeks amongst other works, planning permission for the change of use of the first and second floor from a hot food takeaway to a 5 bedroomed House in Multiple Occupation (HMO) with attic conversion. The proposed HMO would be accessed via the rear access lane to the rear/south and a proposed external staircase would provide access to an elevated first floor platform.
7. Whilst there are many commercial properties surrounding the appeal site, there are also many residential properties including a residential flat in the upper floor property adjoined to the north and those to the west and south. The existing ground floor of the appeal site would remain as a hot food takeaway which benefits from planning permission allowing for late night operation up to 23.45 Monday-Thursday, up to midnight Friday and Saturdays and 23:30 on Sundays. The Council's Environmental Health section has confirmed that the ground floor hot food takeaway benefits from a license allowing operation, including delivery and servicing, up to 02.00.
8. The appellant has submitted a Noise Impact Assessment. However, this assessment included the external air conditioning units which no longer form part of this appeal. I cannot therefore be certain of the results of the assessment, or the need for any sound insulation to mitigate any impact for the future occupiers of the upper floor residential use. Additionally, and whilst the air conditioning units do not form part of this appeal and thus not determinative, the assessment did identify that the air-conditioning units would result in an adverse impact on existing and

proposed dwellings. These have been repositioned internally and I am not convinced that this would address the noise impacts as set out in the assessment. This is because the noise and vibration from the installed air-conditioning units would transmit through the appeal site to the proposed upper floor residential use and to surrounding neighbouring properties.

9. The Noise Impact Assessment would need to consider the 'agent of change' as set out in the Framework of introducing a residential use above the established existing hot food takeaway at the appeal site which I currently do not have in relation to the appeal proposals. The scheme has therefore failed to demonstrate that the development would not result in an unacceptable adverse impact on residential amenity for the proposed upper floor residential use above an existing hot food takeaway.
10. The ground floor use features existing high-level extraction and ventilation equipment, in the form of flues that extend up the rear/west elevation. The proposed development would introduce a door on the first-floor rear/west elevation, in addition to rooflights on the rear roof slope which is above the termination point of the existing flues allowing odour to be blown upwards.
11. The Noise Impact Assessment fails to assess the impact of the existing flues or recommend if any mitigation is required. Consequently, I cannot be confident that the proposed development would not result in harmful impacts upon the residential amenity and have the potential to result in unacceptable health impacts on existing surrounding residential land users and future residential occupiers of the appeal site. The flues may have been in place for some time and there may have been no objections from existing occupiers, but this does not mean that the development would not be harmful nor justify the scheme. Additionally, I understand that the appellant has not submitted a Lawful Development Certificate to demonstrate that the flue has been in situ for over 10 years.
12. For the reasons given above, the proposed development would unacceptably harm the living conditions of existing surrounding residential land users and future residential occupiers of the appeal site with particular regard to noise disturbance and health. The proposed development would therefore be contrary to Policy CS14 (iii) of the Planning for the Future Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 20210-2030, 2015 (CS) and Policies DM23 (v) and DM24 (ii & v) of the Newcastle Upon Tyne Development and Allocations Plan 2015-2030, 2020 (DAP). Amongst other matters, these policies ensure that noise, disturbances, smells, fumes, and other harmful effects from surrounding land uses and/or associated operations will not have an unacceptable adverse impact on residential amenity. For the same reasons, the proposed development would also be contrary to paragraphs 187 e), 198 a) and 200 of the Framework relating to conserving and enhancing the natural environment.

Living conditions – privacy

13. The proposed access to the first floor of the appeal site would be via an external staircase and raised platform on the rear/west elevation of the property. Its overall height and projection have the potential to result in overlooking and a perception of overlooking to surrounding residential properties. This is because the neighbouring properties of No's 177, 88 and 90 are located to the side/north within very close proximity of the proposed staircase and raised platform. Such properties feature

upper floor residential flats, with habitable room windows in their respective rear elevations. Due to the relationship that exists, these windows would be readily visible from the proposed staircase and elevated platform in very close quarters allowing for clear and unobstructed views into these habitable rooms. This would result in a loss of privacy for existing occupiers.

14. There may have been no objections to the external staircase and elevated platform from existing neighbouring occupiers but again this does not mean that the development would not be harmful. I also note the appellant's comments regarding the likelihood of loitering on the stairs or any elevated platform. Even so, this would be the sole access for the proposed development and would still allow for overlooking opportunities which is unacceptable. Some overlooking may be present at the appeal site given the relationship of windows to surrounding residential properties but the existing windows at the property are not directly comparable to an external staircase which would significantly increase the loss of privacy for existing occupiers of surrounding properties. Existing levels of overlooking would not justify further levels of overlooking.
15. For the above reasons, the proposed development would unacceptably harm the living conditions of existing occupiers of No's 177, 88 and 90 with particular regard to privacy. It would therefore be contrary to Policy CS14 of the CS and Policy DM23 (Part 2, criterion iii) of the DAP which together, amongst other matters, ensures development will maintain a good standard of privacy for all existing and future occupants of buildings. For the same reasons, the proposed development would also be contrary to paragraph 135 f) of the Framework relating to achieving well designed places.

Highway safety

16. The proposed development would feature a sole pedestrian access from the rear access lane to the side/south. The access lane does not benefit from a footpath for pedestrians to access the upper floors. The rear access is used for service and delivery vehicles, parking and access to residential parking in rear yards. At my site visit, I observed a number of cars being parked along this access along with bins storage and other domestic and commercial paraphernalia such as planters etc.
17. The proposed development would see an increase in movements along this access which given the lack of footway could result in conflicts between pedestrians and vehicles and thus would be prejudicial to highway safety. The obstruction of bins and other paraphernalia would also impact how people move across the access lane which could prove difficult for disabled/visually impaired people etc. It is also not the safest and most welcoming route and whilst the bins would slow traffic, this cannot be relied upon as a traffic calming measure, and I am not convinced that increasing its usage would make the access lane safer. The proposed development therefore fails to provide a safe and suitable access to the site.
18. The properties located along Rothbury Terrace and Meldon Terrace do have access out onto the back lane, but this is understood to be a secondary access only as their main access is from the roads in which they face. This would not therefore justify using this lane as the sole access to the site and any approved cycle stores in rear yards and gardens would not alter this. The appellant claims

that No 169 Chillingham Road has sole access to the upper floor via a side door from the access lane. This may be the case but there is no planning history associated with this and thus the historic arrangement would not justify using this lane as the main access to properties. Additionally, this door is located closer to the main footpath and has double yellow lines across the front preventing obstructions. The appeal site would not benefit from double yellow lines meaning that obstructions could indeed take place for the only exit point which would be unacceptable.

19. For the above reasons, the proposed development would unacceptably harm highway safety. It would therefore be contrary to Policy CS13 part 3 (vii) of the CS and Policy DM10 of the DAP which together, amongst other matters, ensures development provides for direct, safe, secure and continuous pedestrian and cycling links. For the same reasons, the proposed development would be contrary to paragraphs 115 b) and 116 of the Framework relating to promoting sustainable transport.

Other Matters

20. The appellant explains that an alternative access to the first floor is not possible, and I am aware of difficulties in this regard as well as the arrangements in place for the ground floor unit. Even so, this would not alter my findings on the above main issues, and I am mindful that the existing access was indeed removed. I am not therefore sufficiently convinced that such could not be reinstated via internal works to the ground floor. There may be a long lease on the property, but this would not be sufficient to justify the scheme, and discussions would need to take place between the main parties as a separate matter.
21. The appellant sets out some other local policies relating to choice of housing, effective use of land etc although the proposed development would still need to comply with the above-mentioned policies which this scheme does not. I do not dispute that there would be some minor economic, social and environmental benefits associated with the scheme from provision of housing, contributing towards housing numbers and bringing the site back into use. The extent to which this would however be beneficial is limited given the small-scale nature of the proposals and thus would not be sufficient to outweigh the harm identified.

Conclusion

22. The proposed development would conflict with the development plan when considered as a whole. There are no material considerations, either individually or in combination, that would outweigh the identified harm and associated plan conflict. I conclude that the appeal should therefore be dismissed.

N Teasdale

INSPECTOR