



Appeal Decision

Site visit made on 26 September 2025

by **J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC**

an Inspector appointed by the Secretary of State.

Decision date: 20 October 2025

Appeal Ref: APP/P4605/W/25/3369614

207-209 Stratford Road, Sparkbrook, Birmingham B11 1QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Muhammad Younas against the decision of Birmingham City Council.
- The application reference is 2024/04807/PA.
- The development proposed is described as 'Change of use of existing premises to Shisha Lounge (Sui Generis), including installation of an external chimney extraction flue to the rear of the property.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Upon my site visit, a first floor side extension to the property has been erected which consists of a blue metal framed structure with glazed moveable infills which extends the proposed building to form a covered area at first floor. According to the Council this structure does not have consent and is not constructed in accordance with the proposed plans under this application where the proposed plans show that the glazed section extends to the front façade and that the elevations of the framework are also different. The Application Form also suggests that the development has not commenced, albeit there are many similarities in the Appellant's Statement of Case (SoC) to what has been constructed, such as the blue colour, and materials to be utilised, although the design is not exact. The Appellant's SoC or Final comments do not clarify whether the development as constructed is what is being sought planning consent or whether consent is sought for what is detailed on the proposed plans. Despite this, for the purposes of this appeal I will only assess what is detailed on the proposed plans, with what I saw on site being indicative.
3. Taking the above into account, it is not for me under a Section 78 appeal to determine the current correct and legal development of the existing building. I have therefore made my decision on this basis of the proposed plans and to the development plan and relevant material considerations. To that end it is open to the Council to pursue enforcement action, or for the appellant to apply for a determination under sections 191/192 of the Town and Country Planning Act if they believe the lawful development is different. My determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.
4. Despite the Planning Officer Report mentioning nearby designated heritage assets, it is not obvious within the report that the duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) has been discharged. Given

that this duty is best dealt within the matter dealing with character and appearance and the local listed building, I will deal with this duty in association with this matter.

Main Issues

5. Taking the above into account, the main issues are:
- Whether the proposal would preserve the setting of the listed buildings known as 'Ladypool Primary School' (Grade II*) and 'St. Agatha's Church' (Grade I), including the character and appearance of the existing building (locally listed) and the surrounding locality; and
 - The effect of the proposed development upon the living conditions of the surrounding residents, with particular regard to noise and disturbance.

Reasons

Legislation and Policy

6. Section 66 of the PLBCA prescribes a duty upon a decision maker to give special regard to the desirability of preserving the significance of a listed building or its setting.
7. In relation to local planning policy, the Birmingham Development Plan (BDP) Policy PG3 is a place making and design related policy which seeks to ensure development maintains high quality design and a strong sense of place that reinforces local distinctiveness, and respond to site conditions and the locality, including heritage assets and incorporating attractive features. Additionally the policy is supported by the Birmingham Design Guide Supplementary Planning Document (SPD) which gives further guidance and design principles as to how development, alterations and extensions can give appropriate considerations to heritage assets, local distinctiveness and setting.

Site Description

8. The appeal site has its front elevation along Stratford Road and its side boundary along Ladypool Road. Stratford Road is one of the main arterial roads that leads into the outer ring road of the Birmingham City Centre. As Birmingham grew during the industrial revolution, areas of commercial activity were constructed along main roads such as Stratford Road which formed smaller shopping streets and services for the local community. This is illustrated by the erection of the Grade II* Ladypool School adjacent the appeal site, a product of the nineteenth century Education Act, as well as the large St. Augusta Church (Grade I) further along Stratford Road. The commercial buildings that are constructed along this point are Victorian and Edwardian in style, terraced, domestic in scale with pitched and gabled tiled roof forms, whereby dwellings may have been converted to retail and associated uses during the nineteenth and twentieth centuries. Buildings are predominantly two/three stories tall constructed with red midlands brick, with some buildings having been rendered over the years.
9. The Appeal site was formally a public house and appears to be a coaching inn from the late 19th Century. Unlike the surrounding more domestic scale and design of buildings, the appeal building is detached and stands prominently at this main

corner site and is setback from the road which elevates it's status. The building is three stories tall with parapet with the front main component of the building in a stucco, with string course to the bottom of the parapet. Over the years, it would appear that inauthentic windows have been replaced, with changes to fenestration materials and changes to the ground floor. To the rear the building has an original two storey wing that is subservient to the front component with a pitched and gabled tiled roof with later two storey and single storey extension built to the side of the rear wing that is constructed along the Ladypool Road boundary but is not as long as the two storey extension to the rear. The rear extensions are also finished in a white render. Above the single storey extension is a metal framed first floor extension with moveable glass insets. Within the gap between the single storey and original two storey wing is an external staircase and large silver metal extraction flues.

10. Whilst it is not clear as to why the Council consider the building as a Locally Listed Building, assessing this against the Historic England Guide¹, the appeal building is a positive historic building which assists in demonstrating the historic origins and associated trades and services, as well as the Victorian expansion of Birmingham and the way surrounding streets were developed. It's local use of vernacular is particularly important for understanding the use of traditional materials and reinforcing local character, and the distinctiveness of the area. Whilst the appeal dwelling has been extended to the rear some of which are considered inappropriate and unsympathetic materials and design, the appeal building still maintains a positive presence to the street scene alongside the other historic buildings found along Stratford Road. As such I agree that it should be considered a non-designated heritage asset which is considered according to Paragraph 216 of the National Planning Policy Framework (the Framework).

Character and Appearance

11. Some of the important characteristics that make up the local character and distinctiveness of the area consists of the Victorian expansion of Birmingham and the High St type services and facilities that were constructed along the road. The large tower of St. Agatha's Church has a domineering and landmark presence and appearance over Stratford Road at this location which reinforces the somewhat High Street location.
12. The buildings are of vernacular construction to the locality, are functionally designed buildings which contributes to an understanding of the former form and function of Stratford Road, and its layout and how the buildings are experienced, reinforcing their location, identity and setting. Whilst the surrounding retail buildings have no/minimal setback from the road edge, the appeal site has a setback further from Stratford Road and detached which presents a higher status to the road. These are some of the important elements that make up the positive qualities that reinforce the character and local distinctiveness of Stratford Road.
13. The existing elevation plans illustrate that there was a small glazed balcony type structure that was clear and lightweight which enabled views to the more subservient rear wing of the building. The enclosure of the first floor terrace with an oversized extension which contains blue metal frame with dark glass insets. The oversized nature of the extension which projects to the front façade creates an

¹ Historic England, 'Local Heritage Listing: Identifying and Conserving Local Heritage,' 2021

awkward and dominant form of development that is overcomplicated in its design and would not present an appropriate architectural approach that would be considered sympathetic to the existing building or taking into the context of the surrounding buildings. The extension also blocks architectural details such as the subservient historic wing to the rear. Whilst I appreciate that there have been deliberate attempts to minimise visibility, visibility is not the only consideration to be had as part of assessing the character, appearance and local distinctiveness of the building or area.

14. I am not convinced by the Appellant's arguments that the first floor side extension is lightweight, visually recessive or reversible, the alterations are indeed quite permanent and due to the colour, form and materials utilised has a very domineering presence on the existing building and does not reinforce the positive qualities of local distinctiveness of the building or the locality.
15. Turning to the installation of the extractor system, these are installed to the rear of the extension in front of the stairwell within the gap along Ladypool Road. There are already three large flues along this façade which already add clutter to the building and have not had any mitigatory measures applied, such as screening, colour etc, to reduce their appearance. Whilst there is a report of the proposed additions to the extraction system, the report is a specification rather than a report that goes through options around placement, operation, size, colour for example in terms of identifying the relationship between the building, the extraction system and it's potential effects towards the character and appearance of the building and the locality. It is unclear why the existing extraction system cannot be upgraded/modified to cope with the demands of the new use, or whether a smaller more combined system might work better and reduce the clutter that already exists. I also note comments from the Council's Design Team as to potential screening options, and whilst this may mitigate some effects, any proposals have not been put forward as part of this Appeal.
16. I can also appreciate advice given in the pre-application appears to dispute the contribution and harm caused to the non-designated heritage asset on the basis of what is viewable. Whilst I appreciate that pre-application advice is not binding upon a subsequent application, I have also found there to be shortcomings in the assessment of significance of this locally listed building which has predominantly focussed on views and that harm has been discounted as a result of the proposal's visibility within the street scene. The assessment of significance towards heritage assets is not limited to what is purely visual with there being a need to consider both tangible and intangible aspects which contribute to the significance of a building and its setting. After considering these additional elements of significance it is clear to me that there is harm caused to the significance of this non-designated heritage asset which needs to be balanced in accordance with Paragraph 216 of the Framework.
17. Taking the above into account, the proposals would not be a sympathetic alteration to the existing building and would be harmful to the architectural authenticity and integrity of the existing building as a result of its disproportionate bulk, clutter and massing. Consequently, the proposal would cause detrimental impacts toward the character and appearance of the locality, and of the existing locally listed building. The scheme would be contrary to BDP Policy PG3 as described previously.

18. I note that the Reason for Refusal on the Council's Decision Notice references to Policy DM2 of the Development Management in Birmingham Development Plan Document (DPD). This policy relates to living conditions and would not be relevant to the consideration of this matter involving character and appearance.

Listed Building Considerations

19. Whilst Ladypool School and St. Agatha's Church individually will have their own elements of significance and heritage value, the main contention in this appeal is with regards to whether the appeal site contributes to the significance and setting of these listings and the resultant effect (if any) as a result of the development.
20. Both buildings were constructed in the late nineteenth century, and part of their significance is related to the expansion of Birmingham after the industrial revolution where there was an emphasis of improving the quality of life after the slum clearances; rekindling values related to education, religion and well-being. The tower of St. Agatha's for example provides a domineering presence along Stratford Road and the surroundings, which is also appreciated and experienced at the Appeal site and along the High Street environment of Stratford Road. The setting of both buildings is particularly wide given that the buildings have an inherent relationship of the formulation of a High Street and surrounding suburban nature, maintaining a range of communal, historic, evidential and aesthetic values that can be still experienced today. These values include the appeal site which contributes to an understanding of the former form and function of the historic High Street and expansion of Stratford Road, its layout, uses and how the buildings are experienced, reinforcing their location, identity and setting. These are some of the important elements that make up the setting of these listed buildings and this setting is integral to both the St Agatha Church's and the Ladypool School's significance.
21. The appeal site is experienced as part of the greater collection of buildings and spaces along Stratford Road and is deliberately of a higher status design against the more modest scale and design of the remainder of the retail along Stratford Road, which reinforces it's status as a former coaching inn. Whilst I appreciate explanation from the Appellant as to the different design options employed, the amendments and reasoning for the proposal; given the design, significance and materials used in the existing building, the proposed development presents an awkward juxtaposition to the existing building that would cause harm to how the building is appreciated within the setting of the listed buildings. The extensions and extraction scheme are unlike anything in the surrounding area and overcomplicate the design of the existing building, departing from its existing appearance.
22. Whilst I appreciate that the Council and the Appellant have not found harm to the significance of the listed building through development within its setting, I have found there to be shortcomings in the assessment of significance where the Officer Report does not appear to discharge the duty under s66 of the PLBCA. After considering these additional elements of significance which contribute to the setting of the listings, it is clear to me that there is 'less than substantial' harm caused to the significance of St. Agatha's Church and Ladypool School as a result of development within their setting.

23. Taking the above into account, the proposal would fail to preserve the setting of the Grade I listed St. Agatha's Church, and the Grade II Ladypool School, and would be contrary to BDP Policy PG3 as described previously.

Living Conditions

24. The main concerns from the Council arise from the lack of proper justification to the change of use in terms of noise and disturbance. Stratford Road has a commercial/mixed use character and forms a suburban high street in this location which has a number of restaurants, takeaways, cafes, pharmacies and supermarkets as well as dwellings and shop-top housing. There is no vehicle parking in front of the appeal site, however further parking areas are present further along Stratford and Ladypool Roads, as well as down residential side streets. The surrounding streets that lead from Stratford Road consist of residential dwellings, as well as apartment complexes, such as opposite the site along Stratford Road.
25. In assessing this proposal, BDP Policy PG3 and DPD Policies DM2 and DM6 seeks that proposals need to consider the amenity of existing and proposed residents, such as factors concerning noise, vibration, odour, amongst others caused by the development.
26. Noise and disturbance are subjective issues to assess, as each neighbour will have different thresholds over what might harm their living conditions. In this particular scenario, the additional noise generated would not be constant and would vary between car doors slamming, vehicle engines revving, if takeaway services are offered - people playing music whilst eating in their cars and, given this location, comings and goings of vehicles as well as pedestrians.
27. The Appeal documents do not contain any technical noise assessment information, such as a noise survey which supports the case that the change of use would not be detrimental because of the external influences, particularly at the weekend. According to the Appellant's SoC the site was previously utilised as a restaurant and did not have any noise complaints. However, the lack of complaint does not mean that the change of use is acceptable to the local community, particularly seeing as a result of the advertisement of this proposal, that the application received objections to the proposal. It is also unclear how the use would operate and whether there are similarities/differences between the existing and proposed use. Comments from interested parties relate to the comings and goings of vehicles, the playing of music and the comings and goings of people along the side streets. I can appreciate that as perceived noise during late hours is not consistent and focused upon one specific location, and that noise as a result may be difficult to measure.
28. What is perceived as small changes to existing and proposed uses can have significant impacts to a large amount of residents. Noise and disturbance is much more perceptible during the early hours of the morning with the surrounding streets not having much ability to mitigate against persons walking and being loud of an evening, playing music etc. There is also the likelihood of cars utilising the side streets to park their vehicles, doors closing, and people choosing to eat and play music and socialise in vehicles also which would cause significant harm to living conditions of residents along the side streets and residents opposite along Stratford Road.

29. Given the above, it has not been sufficiently demonstrated that the proposed use will not cause adverse impacts to the living conditions of surrounding occupiers. A balanced approach needs to be undertaken which considers the community as a whole and the impacts upon this. Whilst I am aware that conditions could be used to control elements of the proposal, the principle of such has yet to be established. The principle of the use is reliant on understanding how the premises operates in determining what measures would be appropriate to condition. Without information such as a noise survey, any condition would not be specific enough to meet the tests of conditions.
30. Taking the above into account, the information provided within the appeal is insufficient to demonstrate that the proposed change of use including alterations would not cause adverse harm to the living conditions of surrounding residents. As such the proposal would be contrary to BDP Policy PG3 and DPD Policies DM2 and DM6, as described previously.

Balancing Exercise

31. The proposal has been found to fail to preserve the setting of the listed buildings as required by S66 in accordance with the expectations of the PLCBA and the Framework at Paragraph 212 where great weight should be given to the asset's conservation ... irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance.
32. Although serious, the harm to the significance of the listings would both be 'less than substantial,' within the meaning of the term in paragraph 215 of the Framework. Paragraph 213 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 215 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal. There is also harm caused by development that would affect the significance of the locally listed building whereby this harm is also considered as per Paragraph 216 of the Framework.
33. The public benefits of the scheme are mentioned in the Appellant's SoC, which would result in the change of use of an empty building which is a non-designated heritage asset; the employment of staff and contributions to the night time economy. Additionally there would also be economic benefits in terms of additional contributions to the vitality and viability of the High Street along Stratford Road and the proposal would also have benefits to the social stream of sustainable development in that it enables increased community cohesion and a meeting place for the local community. These benefits would also be present in a scheme which was more in accordance with the development plan. Overall, and in conclusion of this matter, the public benefits arising from the proposed development would not outweigh the harm I have identified and to which I accord considerable importance and weight. The scheme therefore conflicts with the Framework, as per paragraph 212, as described previously. The proposal would not therefore be made in accordance with the development plan.

Conclusion

34. For the reasons given above, I conclude that the appeal be dismissed.

J Somers

INSPECTOR