



Appeal Decision

Site visit made on 4 July 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2023

Appeal Ref: APP/H4505/W/23/3320924

The Cottage, 18 Talbot Terrace, Birtley Central, Gateshead DH3 2PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Daniel Boroumand against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref DC/22/00900/FUL, dated 9 August 2022, was refused by notice dated 13 December 2022.
 - The development proposed is described as, '*new signage to front elevation including steel framework and roof over front entrance. Glass balustrade around front boundary to create seating/waiting area*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description in the above banner heading has been taken from the original application form. It does however include for new signage to the front elevation and a separate application for advertisement consent has been submitted to the Council under reference DC/22/00901/ADV and subsequently refused. I have determined this appeal on the basis that it relates to the works as set out above excluding for any signage.
3. Some of the works as described above have already been carried out onsite including the canopy over the front entrance and metal framework which is understood to have been erected to support a proposed fascia sign. The appeal before me has therefore been assessed on a part retrospective basis.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The health of the local community;
 - The character and appearance of the host property, including whether it would preserve or enhance the character or appearance of the Birtley Conservation Area (CA) or preserve the setting of the Grade II listed building, former Co-operative; and
 - Highway and pedestrian safety.

Reasons

Health of the local community

5. The appeal site relates to a hot food takeaway located within a commercial setting, occupying a prominent position along a busy high street where there are a number of other town centre uses.
6. Paragraph 92 of the National Planning Policy Framework (the Framework) explains that planning policies and decisions should aim to achieve healthy, inclusive and safe places which amongst other matters, enables and supports healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling. Planning Practice Guidance (PPG) also explains that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities.
7. Policy CS14 of the Planning for the future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030, 2015 (CS) relates to wellbeing and health and explains that this will be maintained and improved by: controlling the location of, and access to, unhealthy eating outlets. The Gateshead Council Supplementary Planning Document, Hot Food Takeaway Supplementary Planning Document, 2015 (SPD) provides further consideration regarding the location and access to such uses. This confirms that the borough of Gateshead currently has a high level of obesity and that the number of hot food takeaways per thousand people is higher than the national average. As a result, a number of planning application considerations are set out with an aim to tackle obesity levels and improve the health of the local community.
8. The SPD would discourage a new hot food takeaway in this specific area owing to the proportion of year 6 pupils that are obese, number of units in the ward and proportion of units in hot food takeaway use in the district centre. Whilst the proposed development would not result in a new hot food takeaway use, the policy and SPD seeks to control not only the location of such uses but access to these uses and thus is considered relevant in this case.
9. The proposed works would increase the capacity of the usable floor space by providing an enclosed seating area within the boundary externally. This would improve the aesthetics of the established premises and overall facilities on offer and thus would appeal to a wider audience. The Framework explains that planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt with a need to support economic growth and productivity as well as ensuring the vitality of town centres. However, such provision although not a new use would improve the attractiveness of the outlet by providing a larger external seating area in a location where there are strict controls in place regarding such uses and access in the interests of the health of the local community.

10. Lifestyle choices/activity may be different since the Covid 19 pandemic. However, I am not convinced that appealing to a wider audience would encourage the public to extend their walking distance as it cannot be assumed that such customers would be from further afield or would walk to the premises. I have had regard to the appellant's comments regarding wheelchair provision, number of steps provided and glass balustrade. However, such matters would not overcome the harm identified and I am not convinced that such measures would result in more steps given the small-scale nature of the proposals and area of coverage.
11. Although the SPD was adopted in 2015, it is still a material consideration in the determination of this appeal. Additionally, the evidence suggests that a recent survey was undertaken on 5 July 2022 which confirmed that the number of hot food takeaways within Birtley District Shopping Centre is still high, exceeding that permitted within the SPD. As set out above, the proposed development would not result in a new hot food takeaway use. However, it would increase access to the business which could affect the health of the local community and thus would be contrary to the overall focus of the policy and SPD.
12. The menu and clientele of the current occupier might well be aimed towards families rather than students and young children and there are no special offers, discounts, card payment facilities as well as the premises not being open at lunchtimes. However, I am unable to control the operator, clientele, or menu of the unit, all of which could change over time. The evidence is such that the borough of Gateshead currently has a high level of obesity and irrespective of not appealing to young children and students, there is still a clear focus to reduce such levels generally through location and access to such uses.
13. There are benefits of families bonding as well as time spent outdoors. However, by increasing the attractiveness of the premises where food can be eaten in more attractive surrounds, could contribute to the identified high obesity levels.
14. For the above reasons, I conclude that the proposed development would unacceptably affect the health of the local community. It would therefore be contrary to Policy CS14 of the CS and the overall focus of the SPD. For the same reasons, it would also be contrary to the aspirations of the Framework as set out above.

Character and appearance

15. The site lies within the CA and lies adjacent but detached from the Grade II listed former Co-operative buildings located to the south. As such, I have a duty under Section S66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. I have also had regard to paragraph 199 of the Framework which states that when considering the impact of a proposed development

on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

16. The CA is noted for its mixture of individual major buildings, often in extensive grounds; single older terraces and a number of infill schemes. The evidence suggests that the late nineteenth/early twentieth century stone and brick buildings along Durham Road, although altered at ground floor level, still possess many of their original architectural details. These buildings, including the former Co-op buildings (which are statutorily listed), contribute to the historic character of the townscape in this part of the area.
17. The appeal property is located along the eastern side of the high street and stands on its own being detached from any other buildings including the listed building to the south. The property extends further back to the rear, but its original form comprises a T shape meaning that the building line of the front elevation is staggered with the main entrance to the building being set back from the remaining elevation and an external open aspect stepped entrance infills this gap. The building is broadly in line with the buildings to the south although the front most part of the elevation and stepped entrance does project further forward. It is however set slightly back from its neighbour to the north.
18. A slate tiled monopitch canopy has been installed over the stepped entrance providing cover for customers. Given, the form of the building and staggered front building line, the canopy element does not project significantly forward of the front most part of the elevation and does not extend further out from its neighbour to the north. Additionally, the height sits at a lower level in relation to the host property with an overall design similar and complementary to that of the main property.
19. That said, the associated structural supports comprise several metal posts which are thick and heavy looking. A number of the posts project further forward from the front of the canopy element and extend a considerable height sitting above the canopy. The posts have resulted in the introduction of an unduly dominant and intrusive feature at this visually prominent site, to the detriment of the appearance of the host property and surrounding street scene which includes the adjacent Grade II listed building. I appreciate that the colour of the frames would be painted grey to match the colour of the windows and door. However, this would not be sufficient to mitigate against the harm identified. The appellant has suggested masking the structural supports. However, I can only consider the submitted plans and such details are not shown. As such, I cannot consider this as part of the appeal.
20. The proposed development would also include for the installation of a glass and stainless-steel balustrade which would be installed above the stepped entrance providing for an enclosed seating area. The existing steps would be reduced in height meaning that the balustrade would sit closer to ground level and would wrap around the front of the building. Whilst such features are not common in the surrounding area, it would not be of a size or scale to dominate the existing building. Additionally, it would be positioned close to ground level and would be contained within the external stepped

entrance area and would therefore remain subordinate to the main property. The use of glass would also help break up its overall mass and as a result, it would not be harmful to the overall appearance of the building and wider street scene. I am also persuaded that the changes proposed to the steps would be an improvement on the existing which are in a deteriorating state.

21. Despite my findings in relation to the canopy element and proposed balustrade, this would not overcome the harm identified in relation to the structural supports. The proposed development would therefore unacceptably harm the character and appearance of the host property and thus would fail to preserve the character or appearance of the CA. It would also fail to preserve the setting of the listed building. This would result in less than substantial harm to the significance of these designated heritage assets.
22. In such scenarios, the Framework explains that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I recognise that the proposed development would make the existing steps safer to use and I have had due regard to their present condition. I am also aware of issues regarding wind and cold air. Nevertheless, there is no evidence before me to suggest that such matters could not be achieved by a scheme that would be less harmful to the CA and setting of the nearby listed building.
23. Customers to the takeaway may well use the parking to the rear of the property and visit other high street shops. There would also be some local employment through supervision and cleaning as well as work for local tradesmen. However, given the small-scale nature of the proposals, any benefits associated would be very minor and would not be sufficient to outweigh the harm identified.
24. Overall, it has not been demonstrated that there are sufficient public benefits to outweigh the less than substantial harm to the CA or the setting of the listed building to which I have attached great weight given the requirements of the Framework.
25. The proposed development would therefore be contrary to Policy CS15 of the CS and Policies MSGP24 and MSGP25 of the Site Allocations and Development Management Policies Making Spaces for Growing Places Local Plan Document for Gateshead, 2021 (MSGPLP) which together, amongst other matters, requires development to contribute to good place making through the delivery of high quality and sustainable design, and the conservation and enhancement of the historic environment.
26. The proposed development would not conserve the heritage asset in a manner appropriate to its significance, or positively contribute to local character or distinctiveness in line with the aims of Section 16 of the Framework relating to Conserving and Enhancing the Historic Environment.

Highway and pedestrian safety

27. A narrow lane is located to the direct south of the site providing access to the rear of the premises as well as serving adjacent land uses to the south. Whilst only a snapshot in time, I noted at my site visit that there were several cars parked to the rear and that this area was well used despite it being a dead-end zone. Given the location of the lane to the direct south, pedestrians using the high street cross the lane informally to the front of the appeal property.
28. Currently, vehicles exiting the lane onto the high street have a sufficient level of visibility for approaching vehicles and pedestrians to be able to stop in time without causing severe safety implications. The proposed development would however introduce a glass and stainless-steel balustrade in close proximity to the access lane, in a location close to where pedestrians cross. Even taking into account the transparency element, it would provide for a waiting/seating area which would intensify the use along with steel posts and railings which would obstruct views and increase the impact on highway safety for all road users when exiting the site. It would also present a potential distraction to highway users.
29. The reduction in height of the steps is noted as well as the height of the seating area being lower than the viewing height of someone in a car. However, this would not overcome the issue of visibility as views would still be obstructed by reason of the intensity of use particularly on occasions where customers stand up as well as the presence of steel posts and railings. It would also not overcome the matter of additional distraction.
30. The enclosure of the front area would ensure that the public would access the premises from the pavement only and would avoid the blind corner to the side road. No compelling case has however been submitted to demonstrate that this is currently an issue or that such measures would improve the safety of the public or improve visibility. The appellant refers to road markings and speed measures that could be introduced upon the lane. Such details have not been provided and thus cannot be considered as part of this appeal.
31. Neither the fact that the building is set back, nor the existence of the wide footpath, would overcome the visibility issues, particularly as the point at which pedestrians cross cannot be controlled.
32. For the above reasons, I conclude that the proposed development would unacceptably harm highway and pedestrian safety. As such, it would be contrary to Policy CS13 of the CS and Policy MSGP15 of the MSGPLP which together, amongst other matters, requires development to not have an unacceptable impact on the safe operation of the transport network. For the same reasons, it would also be contrary to the aspirations of the Framework relating to promoting sustainable transport.

Other Matters

33. I am aware of a previous appeal under reference APP/H4505/C/18/3193759 which related to a hot food takeaway nearby. However, that appeal was for

a change of use from A3 to A3 / A5 to allow home delivery which is very different to that of the appeal before me and are therefore not comparable. This previous appeal would not therefore change my findings on the above main issues. Neither would the study referred to by Dr Barry Popkin as details of this are limited to enable me to comment fully and, in any event, would not supersede the findings above or overall aim of the policy and SPD. There is also no compelling case to suggest that the issues associated with levels of obesity are down to the acts of the Council's licensing department.

34. The seating area would allow for a more enjoyable experience for loyal customers of over 40 years and the plans may well be seen as an improvement by family, friends and builders. I am also aware that competition is high particularly during a difficult trading period. However, such matters would not be sufficient to outweigh the harm I have identified.
35. Reference has been made to the signage of other restaurants nearby. As set out earlier, a separate application for advertisement consent has been submitted to the Council under reference DC/22/00901/ADV and subsequently refused. The signage element does not form part of this appeal despite the description of development, and I do not therefore find it necessary for me to consider the matter of signage further. Works that have taken place elsewhere would also not be a reason to justify further development that would be inappropriate for the reasons set out above.
36. A condition could be applied limiting the use of the outside area to protect the amenity of the surrounding area in terms of noise disturbance. I also accept that outlook onto the steel support posts would not be unduly restricted from the first floor of the property given its use as a storage space. However, a lack of harm in such matters are neutral weighing neither for nor against the development.

Conclusion

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

N Teasdale

INSPECTOR