
Appeal Decision

Site visit made on 24 October 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 November 2016

Appeal Ref: APP/E2734/W/16/3156829

243 Skipton Road, Harrogate, Yorkshire HG1 3EY

- 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 Ali Mintefij against the decision of Harrogate Borough Council.
 - The application Ref 6.79.13185.FUL, dated 20 January 2016, was refused by notice dated 24 May 2016.
 - The development proposed is change of use from class A1 to class A5.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council advise that they no longer wish to defend the first reason for refusal in respect of the proposal's effect on the retail character of the area. Accordingly, I do not address this matter in the reasoning below.

Main Issue

3. Therefore, the main issue raised by this appeal is the effect the proposed development would have on the living conditions of occupiers of nearby residential properties.

Reasons

4. The appeal site is a shop located in a small retail parade with flats on the first floor above. These are accessed by an external walkway to the rear of the parade which projects out over the ground floor units and which would also appear to be used by the occupiers of some flats to provide a modest area of outdoor amenity space. The flats above therefore have a particularly sensitive relationship with the appeal premises as do residential properties in a block on Knapping Hill which look out over the service area at the rear of the parade.
 5. Odours from cooking can significantly harm the living conditions of occupiers of residential properties in the vicinity of hot food take-away premises if they are not effectively mitigated, for instance by way of appropriate extraction and filtering systems and sensitively sited terminals or flues. Such systems themselves also have the potential to harm residents' living conditions by way of noise and vibration if not suitably sited and specified.
 6. No details of the location, type or specification of extraction equipment has been provided. There is a realistic possibility that harm to neighbouring occupiers' living conditions could arise if such matters are not appropriately
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addressed and I note that an occupier of one of the flats in objecting to the planning application raised concerns about odours from existing establishments.

7. The configuration of the flats above the unit is such that it is not clear that an appropriate system could be installed without adverse effects. It would appear that should an external flue be proposed (as other units in the parade have), extending this vertically would not be straightforward given the intervening walkway and the extent of the flats' windows to the rear elevation. Given the relationship of the unit to the flats above and nearby residential properties on Knapping Hill it cannot be certain that disturbance from odours or noise and vibration would be avoided in the absence of any such details.
8. Although there are existing hot food take away premises in the parade which also have flats above them I have no information about what systems they have in place and can consequently give their presence very little weight in this case.
9. Given the likely potential for harm to residents' living conditions and the uncertainty as to whether an acceptable system could be installed, it would not be appropriate to rely on a planning condition to secure an appropriate specification, as the appellant has proposed. Such a condition would be unlikely to be reasonable and it would introduce an unacceptable level of uncertainty for the appellant, the Council and neighbours as to whether it could be complied with.
10. This failure to demonstrate that neighbours' living conditions would not be harmed would be contrary to Harrogate District Local Development Framework Core Strategy, 2009 Policy SG4 which requires that development proposals protect visual, residential and general amenity, amongst other criteria. As such the proposal would also fail to accord with the National Planning Policy Framework's core planning principle, at paragraph 17, of always seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.
11. Any benefits of bringing the vacant unit into use would be outweighed by the risk of harm to neighbours' living conditions.

Conclusion

12. For the above reasons, and having had regard to all other matters raised, the appeal is dismissed.

Geoff Underwood

INSPECTOR