
Appeal Decision

Site visit made on 10 January 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 26th January 2017

Appeal Ref: APP/U1430/W/16/3160125

The Devonshire, Devonshire Square, Bexhill on Sea, East Sussex TN40 1AB

- 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 F Forte Developments Ltd against the decision of Rother District Council.
 - The application Ref RR/2016/95/P, dated 10 January 2016, was refused by notice dated 17 June 2016.
 - The development proposed is described as '*replacement (upgrade) of extractor unit within existing location (light well) not visible from any public viewpoint – retrospective*'.
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Decision

1. The appeal is allowed and planning permission is granted for replacement extractor unit within existing location (light well) at The Devonshire, Devonshire Square, Bexhill on Sea, East Sussex TN40 1AB in accordance with the terms of the application, Ref RR/2016/95/P, dated 10 January 2016, subject to the conditions set out in Appendix A.

Application for costs

2. An application for costs was made by F Forte Developments Ltd against Rother District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. In 2012, planning permission¹ was granted for a number of works including resumption of former A4 Use. Condition 5 of that permission required, amongst other requirements, that full details of the extraction system, including grease and odours filtration, was submitted to the Council for consideration. It is not entirely clear as to whether these details have been submitted and the condition formally discharged.
4. However, it is clear from the appellant's case that the proposal in this case seeks the retention of an extractor unit which does not have planning permission (hence this appeal and the reference to 'retrospective'). For the avoidance of doubt, I have proceeded on the basis that permission is sought for the extractor equipment shown on the submitted information. The description in the above header also includes extraneous narrative. Whilst not in my gift to change the proposal description as such, for the avoidance of doubt and on the basis of the cases presented to me by the main parties, I

¹ Appendix E – 2011 Planning Permission, ref: RR/2011/2329/P

have used the description replacement extractor unit within existing location (light well) to provide clarity.

5. Accordingly, based upon the evidence before me, I consider the main issue to be the effect of the proposed on the living conditions of neighbouring occupiers, with specific regard to noise, fumes and odours.

Reasons

6. The ground floor of the appeal building, The Devonshire, is operated as a public house which serves both food and drink. During my site inspection I was able to see that food is prepared on site for consumption by patrons, with smells, odours and grease extracted from the kitchen through a square shape extraction flue that is located within a small light well.
7. The light well is surrounded by a number of openings and windows, and these serve private residential properties separate from The Devonshire. In particular, I saw that the top of the air intake is very close to an upper floor window. This relationship can also be seen within the photos submitted by the appellant Appendix D. I understand that the extract vent is situated above the eaves of the building, so that any smells and odours dissipate away from these openings.
8. I was also able to see and hear the extractor in operation as food was being cooked in the kitchen of the Devonshire. Whilst there was a low and constant humming sound within the light well, this did not appear to be especially prominent. I was also able to appreciate the busy nature of the town centre location in which the appeal site lies within, and that there are various noises from the public highway outside the building some of which could be heard from the lightwell. I also note the appellant's point that the overall sound emitted by this extractor would be lower than that originally installed. In practice, this would mean that residents in the adjacent flats would be less affected by noise than the previous equipment.
9. The Council points to factors such as changes in the menu choices and the proximity of neighbouring flats as to the unacceptability of the extraction system. However, the choice of food to be offered in an A4 establishment is typically for the service provider to make, not the Council. Indeed the LPA have not directed me to any specific condition that restricts the food offering at The Devonshire. In terms of concerns over the original condition from 2012, as established earlier, this appeal scheme seeks a new extractor system and should be considered on its own planning merits. I also note the concerns raised by neighbours and that the Council's Environmental Health team have received some complaints on similar matters. However, the submission of specific details could be dealt with by means of conditions, and this would help allay fears over the potential for the equipment to be too noisy or inadequate for its purpose.
10. When taken as a whole, I do not consider that the proposal would result in material harm to the occupiers of adjoining flats with specific regard to noise, fumes and odours. I therefore conclude that the proposal would accord with Policy OSS4 of the Rother Local Plan Core Strategy 2014, which, amongst other aims, seeks to avoid unreasonable harm to the amenities of adjoining residents.

Conditions

11. The Council have suggested four conditions. I have taken into account Paragraphs 123 and 206 of the National Planning Policy Framework, and the guidance set out in the national Planning Practice Guidance in considering these.
12. A condition requiring the development to be in accordance with the drawings is necessary to provide certainty. A condition restricting hours of operation is reasonable and necessary in order to control noise, fumes and odours beyond these hours to protect the living conditions of neighbouring occupiers. Conditions requiring details of noise levels and odour control, as suggested by the Council, are necessary in order to properly control the amount of noise, fumes and so on from the extraction unit. Moreover, such details would be enforceable by providing specific parameters which the noise, fumes and odours could be measured against.

Conclusion

13. For the reasons given above I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

Appendix A - List of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: location Plan, Block Plan, 15/361/1 and 15/361/2.
- 2) The extraction system should only be operated (including cleaning and maintenance) between the hours of 08:00 and 20:00 on any given day, including Bank and Public Holidays.
- 3) Within three months of the date of this decision, an assessment of noise levels from the extraction system which complies with BS4142:2014 (or any replacement document) shall be submitted to and approved in writing by the local planning authority. The details submitted shall include evidence of testing that shows noise levels (including reach background noise levels) at the nearest noise sensitive receptor, and any mitigation measures proposed. Such mitigation measures as agreed by the local planning authority in writing shall be implemented within the set timeframe and thereafter retained as agreed.
- 4) Within three months of the date of this decision, a scheme containing full details of arrangements for internal air extraction, odour control, and discharge to atmosphere from cooking operations, including any external ducting and flues, shall be submitted to and approved in writing by the local planning authority. The equipment shall be maintained in accordance with the manufacturers instructions and operated at all times when cooking is being carried out (within the hours set out in condition 02). Records of the cleaning and maintenance schedules for at least the previous twelve months shall be retained and made available for inspection by the local planning authority at the premises.

----- END OF CONDITIONS -----