
Appeal Decision

Site visit made on 31 January 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 24 February 2017

Appeal Ref: APP/N1350/W/16/3163121
15 Belvedere Road, Darlington, DL1 5EP

- 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 J Singh against the decision of Darlington Borough Council.
 - The application Ref 16/00642/FUL, dated 26 May 2016, was refused by notice dated 10 August 2016.
 - The development proposed is described as amended extractor duct, filters and position.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appellant has indicated that the development for which planning permission is sought in this case is complete and it follows that the planning application is retrospective.

Main Issues

3. I consider that the main issues in this case are the effect of the appeal scheme on: 1) the living conditions of neighbouring residents, with particular reference to noise and disturbance; and, 2) the character and appearance of the street scene.

Reasons

- 1) Living conditions*
 4. No. 15, which contains a hot food takeaway at ground floor level, is an end of terrace property situated on a corner site at the junction of Belvedere Road with Leafield Road. This property has a 2-storey rear annexe, which to one side adjoins that of No. 16, the rearward projection of the latter being slightly longer. The appeal scheme comprises a ducted extraction/filter system (the appeal system), which serves the hot food takeaway and is attached to the back gable wall of the rear annexe of No. 15, close to the side boundary shared with No. 16.
 5. I understand that information previously submitted by the appellant predicted that the appeal system would generate a noise level of 21.5 dB(A) at a distance of 2.7 metres. However, notwithstanding the view of the appellant that the system is quiet, the Council's Environmental Health Officer has confirmed, by measurement, that the actual noise level associated with the
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operation of the system ranges from 45 dB(A) at half power, up to 52 dB(A) at full power. I give greater weight to the survey undertaken by the Environmental Health Officer than the unsupported opinion of the appellant concerning noise levels. This operating noise range is significantly higher than the ambient noise level identified by the appellant as having been recorded in the locality between the hours of 20:00 hrs and 21:00 hrs prior to the installation of the appeal system. Whilst the appellant now suggests that the recorded ambient noise level may not be fully representative of local environmental conditions at that time of day, in the absence of any other measurements, I give that assertion little weight. Furthermore, I have no reason to believe that the recorded ambient noise level is not reasonably representative of other times of day.

6. The planning application form indicates that the hours of opening of the hot food takeaway are from 12:00 hrs to 21:00 hrs Monday to Saturday and 12:00 hrs to 19:00 hrs on Sundays and Bank Holidays. I consider it likely that during those hours the kitchen of the appeal premises would be in use and the appeal system operating. In my judgement, during those periods, it is likely that noise generated by the system noticeably and significantly increases the noise and disturbance experienced by residents of No. 16 when using their rear yard, which is their only external amenity space, and also their rooms served by rear windows, when the windows are open.
7. I conclude that the appeal scheme causes unacceptable harm to the living conditions of neighbouring residents, contrary to the aims of Policy CS16 of the *Darlington Local Development Framework Core Strategy, 2011*, which insofar as it seeks to secure a good standard of amenity for all existing and future occupants of land and buildings is consistent with the aims of the *National Planning Policy Framework* (the Framework).

2) Character and appearance

8. I accept that the previously approved change of use of the premises from a shop to a hot food takeaway is likely to have improved the appearance of the frontage of the property, which I understand was previously boarded up. Furthermore, I have no doubt that an extraction/filter system is a necessary feature of that use. In addition, it is clear, based on the examples of other existing extraction systems serving hot food takeaways drawn to my attention by the appellant, that the scale of the appeal scheme is not unusual. I have no reason to believe that it would be possible to make it smaller without adversely affecting its performance.
9. I accept that positioning the appeal system alongside the southern section of the western gable of the rear annexe of No. 15, as far away as possible from Leafield Road, limits its visibility from public vantage points to the east on both Leafield Road and Belvedere Road. However, the installation is clearly visible from public vantage points to the north and northwest along Leafield Road. From there the appeal scheme is seen against the muted colours of the buildings and, due to its scale and silver colouring, it has an alien and obtrusive appearance. It detracts from the street scene, which is characterised by a regular pattern of 2-storey terraced properties of a traditional appearance.
10. However, with reference to the example given in the Council's Report on the Planning Application of 4 August 2016, I consider that the visual impact of the scheme could be significantly reduced by painting it with a colour more in

keeping with the materials used in the external surfaces of the adjacent buildings. This measure could be secured through the imposition of a reasonable condition, as suggested by the appellant, and, in my view, would satisfactorily limit the impact of the scheme on the street scene.

11. I conclude that, subject to condition, the effect of the appeal scheme on the character and appearance of the street scene would be acceptable and it would accord with the Framework by responding to local character.

Other matters

12. A local resident has indicated that the extraction system has been left on by the appellant at night, outside the consented opening hours of the hot food takeaway. This is disputed by the appellant. Irrespective of whether this is the case, I have found that operation of the system during the consented opening hours causes unacceptable harm to the living conditions of neighbouring residents.
13. The appellant has confirmed that the first floor of No. 15 comprises a flat, which is owned separately from the hot food takeaway at ground floor level. Whilst the first floor is boarded up and the owner has not objected to the appeal scheme, I have no reason to believe that it is unlikely to be brought back into use in the future. When it is occupied, noise from the appeal scheme would also be likely to harm the living conditions of residents of that flat, which has a number of window openings to the rear of the property. This adds to my concerns.
14. Although the appellant has raised concerns with respect to the manner in which his planning application was dealt with by the Council, this does not alter the planning merits of the scheme upon which my decision is based.

Conclusions

15. Notwithstanding my finding that in relation to the second main issue the scheme could be made acceptable, in my judgement, neither this nor any other matters raised would outweigh the harm that I have identified in my conclusion on the first main issue. I conclude on balance that the scheme does not amount to sustainable development under the terms of the Framework and it conflicts with the Development Plan. For the reasons given above, I conclude that the appeal should be dismissed.

I Jenkins

INSPECTOR