

Appeal Decision

Site visit made on 28 March 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 6 April 2017

Appeal Ref: APP/V2825/W/16/3165006

43 Oulton Rise, Northampton, Northamptonshire NN3 6EW

- 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 John Carter, Hawksvalley Properties Ltd against the decision of Northampton Borough Council.
 - The application Ref N/2016/0281, dated 4 March 2016, was refused by notice dated 10 June 2016.
 - The development proposed is described as 'Change of use from shop to hot food takeaway and fix flue above rear of no. 43 to rear flank wall of no. 45'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr John Carter against Northampton Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (a) the effect of the proposed extraction flue on the character and appearance of the site and the surrounding area; and
 - (b) the effect of the proposed extraction flue on levels of odour and noise experienced by occupiers of the first floor flats above 39-45 Oulton Rise.

Reasons

Character and appearance

4. The appeal property comprises one of a short parade of 4 ground floor retail units with flats above at 39-45 Oulton Rise.
 5. The proposed extraction flue would be sited within and above an existing single storey outrigger next to a shared service area at the rear of the unit. Whilst the service area has a utilitarian function and design, it provides the primary means of pedestrian access to the 4 first floor flats and is prominently visible from part of Thruxton Road. The facing rear elevations of the flats provide a source of outlook to these dwellings.
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6. Part of the flue, and all associated plant, would be sited internally within the extension. It would also have a simple slim line form and be some distance from the highway at Thruxton Road. However, its external section would project above the outrigger roof by over 3 metres, the upper 1.45 metres of which would project obtrusively above the adjacent parapet wall when viewed from the neighbouring dwellings, their gardens and the shared access to these. It would also form a prominent and intrusive feature next to the skyline of the building in views from a section of Thruxton Road.
7. Whilst the flue would not be visible from Spinney Hill Road this would not mitigate its visual effects from these other locations.
8. I conclude that the proposed extraction flue would cause moderate harm to the character and appearance of the site and the surrounding area. To this extent its approval would conflict with the provisions of Policy S10(i) of the West Northamptonshire Joint Core Strategy (JCS) 2014, Policies R9(b) and E20 of the Northampton Local Plan (NLP) 1997 and the National Planning Policy Framework (the 'Framework') relating to this issue.

Odour and noise

9. The second reason for refusal concerns the question of how effectively the proposed flue would disperse cooking odours in relation to the first floor flats. The advice of the Environmental Health Officer¹ indicates that the termination height of the proposed flue would be lower than might normally be expected in close proximity to dwellings. In order to address this point, the Appellant submitted revised details confirming that the unit would have an increased minimum 'efflux' (i.e. outward flow) velocity of 15 metres per second.
10. Due to the position and height of the flue, it is possible that under certain wind conditions, even with equipment designed and maintained to this specification, there would be some occasions on which odours would be experienced within the adjacent flats and their gardens. However these would at most be of limited frequency and extent. There is also no reason why the maintenance of the relevant equipment could not be secured by condition.
11. Without suitable mitigation measures a flue in the location proposed could cause noise nuisance to occupiers of the flats. However, I note that fans and other equipment would be sited internally and the use would not operate beyond 2300 hours in the evening. There is also no convincing evidence before me which indicates that acceptable noise limits could not be complied with.
12. I conclude that the proposed development would not have an unacceptable effect on odour or noise levels experienced by occupiers of nearby dwellings. Its approval would not conflict with the provisions of Policies S10 or BN9 of the JCS, Policy E20 of the NLP or the Framework concerning this issue.

Other Considerations

13. The appeal proposal would enable a vacant unit to be brought back into use. This would be a notable benefit, and I have noted that in the case of 41 Oulton Rise it took over 2 years to find an alternative use. However, limited details have been provided of the terms under which 41 Oulton Rise was marketed. Although there is a risk of a delay in finding an alternative use for number 43

¹ E-mail from Senior Environmental Officer dated 18 May 2016

in the event of the appeal not being allowed, I am not convinced on the basis of the submitted evidence that this outweighs the harm that I have identified.

14. I agree that the proposed development would have an acceptable effect on parking provision and the mix of uses within the parade. However, these points constitute a lack of harm in relation to these matters rather than positive benefits to weigh in the planning balance.
15. As the development plan is not absent or silent and relevant policies are not out of date the weighted balance set by the fourth bullet point of paragraph 14 of the Framework does not apply in this case.

Conclusion

16. I have found that the proposal would cause moderate harm to the character and appearance of the site and the surrounding area. Whilst it would not have an unacceptable effect on odour or noise levels experienced by occupiers of nearby dwellings, and would deliver the benefit of bringing a vacant unit back into use, these benefits are outweighed by the harm that I have identified.
17. I conclude that on balance the proposal would not accord with the development plan as a whole or simultaneously promote the economic, social and environmental aspects of sustainable development referred to in paragraph 8 of the Framework.
18. For the reasons given above I conclude that the appeal should be dismissed.

Jonathan Clarke

INSPECTOR