
Appeal Decision

Site visit made on 4 April 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 6th June 2017

Appeal Ref: APP/C4615/W/16/3165631

46-47 High Street, Quarry Bank, Brierley Hill DY5 2AA

- 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 Derek Homer against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/1125, dated 27 July 2016, was refused by notice dated 18 October 2016.
 - The development proposed is for change of use from electrical retail shop to restaurant.
-

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 26 May 2017.

Decision

1. The appeal is allowed and planning permission is granted for the change of use from retail (A1) to restaurant (A3) with extraction flue to side elevation, new bin store and cycle store at 46-47 High Street, Quarry Bank, Brierley Hill DY5 2AA in accordance with the terms of the application, Ref P16/1125, dated 27 July 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Numbers 04, 05, 06, 07 and 08.
 - 3) The premises shall only be open for customers between the following hours:
1100 – Midnight: Mondays to Saturdays
1100 – 2300: Sundays and Bank Holidays.
 - 4) Prior to the commencement of development 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 works detailed in the approved scheme shall be installed in their entirety before the use hereby permitted is commenced. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is being carried out unless otherwise agreed beforehand in writing by the local planning authority.
-

- 5) Before any fixed plant or machinery associated with the development is used, a scheme to mitigate disturbance to other occupiers of the building from conducted noise and vibration arising from its operation shall be submitted to and approved in writing by the local planning authority. All works which form part of the approved scheme shall be completed before use of the plant or machinery, and retained during the use of the plant or machinery for the duration of the development.
- 6) The rating level of sound emitted from any fixed plant or machinery associated with the development, including the discharge of cooking fume from a flue, shall not exceed background sound levels by more than 5 dB(A) between the hours of 0700 - 2300 (taken as a 15 minute LA90 at the nearest sound sensitive premises) and shall not exceed the background sound level between 2300 - 0700 (taken as a 15 minute LA90 at the nearest sound sensitive premises). All measurements shall be made in accordance with the methodology set out in BS 4142: 2014, Methods for Rating Industrial and Commercial Sound, or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property. Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the local planning authority.
- 7) The external section of the extraction flue shall be finished in a black coloured powder coated paint and be retained as such for the lifetime of the development.

Procedural matter

2. The description in the application differs from that shown on the Council's decision notice. As the Council's decision accurately describes the full extent of the proposal, this description is preferred and it is on this basis that I have considered the appeal.
3. Since the application was determined by the local planning authority, the Council has adopted the Dudley Borough Development Strategy (DBDS), which has replaced policies of the Unitary Development Plan (UDP). As such there is now a suite of new policies relevant to the determination of this appeal. These are material changes in circumstances that are directly related to the appeal. The appellant would have been aware of these changes of circumstances given that they were explained in the Council's Statement of Case. Furthermore, the new policies of particular relevance to this appeal are similar in substance to former policies contained in the UDP. Accordingly, I do not consider that the appellant has been prejudiced by this new information.

Main Issue

4. The main issue in this appeal is whether the proposal would affect the living conditions of neighbouring properties by reason of noise.

Reasons

5. The appeal premises are located within the Quarry Bank Local Centre as identified within the Black Country Core Strategy and where Policy L9 of the DBDS would apply. The Council does not contest that there would be a breach

of this policy and I concur with this interpretation. The premises comprise a two storey Victorian property with a double frontage with single and two storey extensions running at an angle to the rear. No's 44 to 48 High Street are locally listed buildings located within the Quarry Bank Area of High Townscape Value.

6. The proposal would see the change of use of the appeal property to a restaurant together with the construction of a flue that would emerge from the roof of the single storey element to the rear at a height that would be higher than the eaves level of the host property, and the installation of bin store and cycle storage facilities both located within the rear yard area. In noting that the property is a locally listed building, the very minimal external alterations proposed would not harm its character or deplete its heritage significance to any degree and I am satisfied that the scale of harm for the purposes of paragraph 135 of the National Planning Policy Framework would be within acceptable limits and the significance of this grouping as a heritage asset would remain unaffected.
7. Policy D2 of the DBDS requires that new plant and machinery such as ventilation systems do not harm the amenity of neighbouring properties in terms of noise in particular; Policy D5 requires detailed measures to be provided that demonstrate how noise from such equipment would be minimized. The appellant has failed to supply background noise readings against which the specification for the system can be assessed. However, I saw at my site visit that there are other systems in place, including on the neighbouring property. I would agree with the Council's Environmental Health Officer that this is a matter that could have been dealt with by way of appropriate planning conditions. There is nothing in the Council's evidence to suggest that noise problems will inevitably arise. Consequently, given the circumstances of this case and the findings following my site visit, I consider that the matter could be satisfactorily dealt with by condition meaning that the proposal would be not be contrary to Policies D2 and D5.

Conditions

8. The Council has considered a number of conditions in the event that planning permission is granted. I have attached the standard time period for commencement of development and a requirement for accordance with approved plans to ensure certainty. It is necessary to restrict the hours when the restaurant is open in order to protect the adjacent occupiers from noise and disturbance. It is again necessary in the interests of avoiding noise for the details of the extractor system to be agreed and for maximum rating levels of sound emission to be fixed so that the living conditions of occupiers of nearby dwellings are protected. In the interests of protecting the character and appearance of the area, a condition is imposed that requires the external flue to be painted in a black colour.

Conclusion

9. In the light of the above reasons and having considered all other matters, the appeal is allowed.

Gareth W Thomas

INSPECTOR