

Appeal Decision

Site visit made on 9 May 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 14th June 2017

Appeal Ref: APP/N4205/W/17/3169584

390 Derby Street, Bolton BL3 6LS

- 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 Mohammed Pandor against the decision of Bolton Metropolitan Borough Council.
 - The application Ref: 96382/16, dated 14 April 2016, was refused by notice dated 5 October 2016.
 - The development proposed is a change of use from retail (Class A1) to cafe/takeaway (Class A3/A5) and installation of extraction flue to rear.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail (Class A1) to cafe/takeaway (Class A3/A5) and installation of extraction flue to rear at 390 Derby Street, Bolton BL3 6LS in accordance with the terms of the application, Ref: 96382/16, dated 14 April 2016, subject to the conditions in the attached schedule.

Procedural matter

2. The change of use to a café has already occurred under permitted development rights, although the two year period for the temporary flexible use has now expired, and the flue is currently in place at the rear of the building. I was able to see this when I visited the site.
3. I note that the description of the proposal was changed by agreement between the parties from 'Change of Use to Cafe/Takeaway (Class A3/A5)' to 'Change of use from retail (Class A1) to cafe/takeaway (Class A3/A5) and retention of extraction flue to rear'. Section 73A of the Town and Country Planning Act 1990 (as amended) (the Act) makes allowance for the submission of a planning application for development which has been carried out before the date of the application. Section 55 of the Act describes development as the carrying out of building operations or the making of material changes of use, as opposed to their retention or continuation. I have therefore removed the word "retention" from the description of the development and substituted "installation". I have dealt with the appeal on the basis that it relates to a change of use of the building to a cafe and takeaway and the installation of an extraction flue.

Main Issues

4. The main issues in this appeal are:
 - The effect of the development on the character and appearance of the area, with particular regard to the effect of the extraction unit; and
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- The effect of the development on the living conditions of the occupiers on nearby residential properties, with particular regard to noise and disturbance.

Reasons

Character and appearance

5. The appeal building is a mid-terraced property located within a linear district centre running along Derby Street and continuing into St Helens Road (A579). The buildings within the district centre are predominantly two storey and in terraced format, although some, including the appeal building have had alterations to provide accommodation within the roof space. The four central buildings in the terrace where the appeal building is located have a higher mansard style roof, incorporating small dormer windows, than those to either side. Within the district centre the majority of the buildings have commercial uses on the ground floor with either commercial or residential accommodation above, with a small number of residential properties interspersed with these uses.
6. To the rear of the terrace containing the appeal building is a small parking area and, beyond this, two storey terraced housing which is a mix of late Nineteenth/early Twentieth Century terraced houses and more recent dwellings, in red and brown brickwork. Directly opposite the appeal site are further commercial properties, with residential properties behind.
7. The appeal building has a shopfront at ground floor level with a fascia sign above. This is consistent with other commercial premises within the surrounding area. The extractor flue emerges from a flat roof at the rear of the building, just below the level of the first floor windows. It then runs up the rear wall of the building and the rear roof slope. The flue has a galvanised steel finish with prominent cowl at the top which projects above the ridgeline of the roof.
8. From Derby Street and St Helens Road the cowl of the flue is not readily visible except in medium distance and longer range views where it is seen within the context of chimney stacks and the varied roof slopes of the block. As such it is not prominent. Due to the presence of the parking area and open space to the rear of the terrace, the flue is more widely visible from this side of the property. However, as a result of the length of the terrace and the raised central section of roofs, although the flue is prominent, it does not dominate the rear of the terrace and is consistent with its commercial nature. Due to the position of the flue on the rear wall of the building, it would not be particularly visible to occupiers of the other buildings from rear windows in the terrace, and the majority of the rear yard areas have been covered over.
9. The front of residential properties in Rumworth Street face the rear of the terrace on Derby Street and the flue would undoubtedly be visible from the windows of some of these properties. The appeal building is separated from these houses by a car parking area and an area of open space which contains a number of mature trees. The degree of separation from the appeal building and the screening provided by the trees significantly reduces the visual impact of the flue when viewed from this position. This screening would still occur, albeit to a lesser extent when these trees are not in leaf.

10. The appellant has drawn my attention to a number of other flues on commercial properties within the district centre and I was able to see these when I visited the site. Whilst I note the Council's point that the planning status of these flues is not known, they are, nevertheless, present in the street scene. Although none of these are as large as the flue at the appeal building, extraction flues of this kind are nonetheless not uncommon in the area and are typically found in commercial areas.
11. From what I saw when I visited the site, because of the commercial nature of appeal site and the adjoining buildings; the location of the terrace within a larger district centre; and the degree of separation from residential properties, the visual effect of the flue is highly localised. Flues and extraction systems are not uncommon in the area and they are the type of ancillary equipment which would normally be seen within a commercial area. The appeal building is not a listed building, nor is it within a conservation area.
12. I therefore find that the development is not harmful to the character and appearance of the area. It would comply with the relevant requirements of Policy CG3 of the Bolton Council Core Strategy 2011 (Core Strategy) which seeks to ensure that new development conserves and enhances local distinctiveness, and has regard to, and is compatible with, the built character of the surrounding area.

Living conditions of neighbouring occupiers

13. Core Strategy Policy CG4 seeks to ensure that new development is compatible with surrounding land uses, and does not have an adverse effect on living conditions of neighbouring properties as a result of odours, fumes or noise and disturbance. The Council has also adopted a Supplementary Planning Document on the Location of Restaurants, Cafes, Public Houses and Hot Food Takeaways in Urban Areas 2013 (SPD) which has to be read alongside Policy CG4. Whilst the SPD states that within groups of shops, cafes and hot food takeaways will normally be permitted, this is qualified by a statement that these uses will not be acceptable where there is a residential property adjacent to the site concerned.
14. The property next door to the appeal building (388 Derby Road) is a dwelling house. The reason for refusal states that the development increases noise and disturbance in and around the premises to the detriment of the living conditions of nearby residents. The Council have cited the proximity of the ground floor window of this dwelling to the doorway to the appeal premises and the potential for customer's vehicles to use the parking bays on Derby Road outside the residential property late in the evening. The appeal building has been in use for over two years in an essentially similar use, and I saw when I visited the site that the opening hours are from 12:00 to 23:15. I also note that the Council's Environmental Health Officer has commented that no complaints have been received regarding the premises and that the extraction system can be operated without causing a disturbance to local residents.
15. Whilst neither party has submitted any technical evidence in respect of noise, if the current use, as the Council suggest, has resulted in increased noise and disturbance in the surrounding area which had an adverse effect on local residents, this would have resulted in complaints being received during the time that it has been in operation. There is no evidence that complaints have been received from occupiers of the adjoining or nearby residential properties,

or which would indicate that the current use as a café, which also offers a delivery service, has had an adverse effect on the living conditions of nearby residents. I attach significant weight to this fact.

16. The proposed development would continue this use and would add a takeaway facility to it. Whilst this would result in some additional activity at the premises, there is no evidence from either party in respect of what this increase might be, over and above that which already occurs. The appeal premises are located within a district centre and adjacent to a busy main road.
17. I saw when I visited the site that Derby Street carries a large volume of traffic and that the background noise level in the area is higher than would be the case in a residential area. Although I am mindful that this only represents a snapshot of the traffic volumes and noise levels, due to the main road nature of Derby Street traffic is likely to be present at most times of the day and in the evenings. The short term parking spaces outside number 388 Derby Street can also be used at any time of day. Similarly, I saw that within the wider area that there are a number of other uses that operate in the evening and, as a result, pedestrian movements through the area will be higher than in a purely residential area.
18. My attention has also been drawn to a number of appeal decisions where the Inspector has concluded that alternative uses to which the premises could be put would be likely to cause equivalent or greater levels of disturbance. I do not have the full details of these cases and so cannot be certain that the circumstances are the same. Nevertheless, the uses falling within use Class A1 identified within these decisions and for which the appeal premises could lawfully be used, such as convenience stores or off-licence premises, would have the potential to generate similar levels of activity later in the evenings to the footfall of a hot food takeaway.
19. The Council acknowledge in their statement of case that there is no evidence to suggest that an A1 use of the premises is no longer viable and, whilst the appellant does not state that an A1 use of the type identified would be implemented, it would be lawful to do so and, accordingly, I attach moderate weight to this.
20. The SPD sets a restriction on the operating hours of cafes and takeaways where they would be located within fifty metres of a residential property. The proposed hours of operation of the premises would be in accordance with those set out in the SPD.
21. I have had regard to the points raised by a third party as a result of the notification of the appeal, which relate to vibration from the extraction system and noise from delivery drivers using the rear entrance to the appeal building. The representation is from a commercial premises and it is not clear from the representation, or from my site visit, whether the upper floor of the premises is used as residential accommodation. This notwithstanding, the property is located in a district centre and on a main road where background noise levels are generally higher and the proposed development would not result in conditions which are materially different than those which arise from the current and immediate past use of the premises.
22. I therefore conclude that, whilst the proposed development would not wholly comply with the requirements of the SPD, for the reasons discussed above, the

development would not cause harm to the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance. It would, therefore, comply with the relevant requirements of Core Strategy Policy CG4, which seeks to ensure that new development is compatible with surrounding land uses and does not have an adverse effect on living conditions of neighbouring properties as a result of odours, fumes or noise and disturbance.

Conditions

23. I have had regard to the list of conditions suggested by the Council. In order to provide certainty regarding what has been granted planning permission, I have attached a condition specifying the approved plans. As full details of the extractor system were not submitted with the application, in order to ensure that the living conditions of the occupiers of neighbouring residential properties are safeguarded, it is necessary to attach conditions requiring that the full technical specification of the extractor system be submitted.
24. It is also necessary in order to safeguard the living conditions of the occupiers of neighbouring residential properties to attach conditions in respect of: noise levels from the plant and machinery used; operation of the extractor system; sound insulation between the premises and the adjoining residential property; hours of operation of the premises; and when deliveries to and from the premises can occur. I have amended some of the timescales in the suggested conditions to allow slightly longer timescales for some actions.
25. The Council have also suggested that a condition requiring that the extractor flue be coloured black is necessary in order to safeguard the character and appearance of the area. As I have found that the extractor flue does not cause harm to the character and appearance of the area in its present form, I do not consider that this condition is necessary.

Conclusion

26. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed, subject to the conditions discussed above.

John Dowsett

INSPECTOR

Schedule of 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 complete accordance with the following approved plans, except where amended by other conditions attached to this decision:

RAD/888/16/1/Rev A –Existing and proposed plans
3. Notwithstanding approved plan number RAD/888/16/1/Rev A –Existing and proposed plans, details of the air extraction equipment, specifications of the equipment, including measures to alleviate noise, vibration, fumes and odours (and incorporating active carbon filters, silencers and anti-vibration mountings where necessary), shall be submitted to and approved in writing by the Local Planning Authority within 42 days of the date of this decision. The ventilation system shall be installed and operated in accordance with the approved specifications within 56 days of the date of approval of the details, and shall be permanently retained thereafter in accordance with the approved specifications.
4. The rating level (LAeq,T) from all fixed plant and machinery associated with the development, when operating simultaneously, shall not exceed the background noise level (LA90,T) by more than -5 dB at any time when measured at the boundary of the nearest noise sensitive premises. Noise measurements and assessments shall be carried out according to BS 4142:1997 "Rating industrial noise affecting mixed residential and industrial areas". 'T' refers to any 1 hour period between 07.00hrs and 23.00hrs and any 5 minute period between 23.00hrs and 07.00hrs.
5. The premises shall only be open to customers between the hours of 12.00 and 23.00, Monday to Sunday.
6. No deliveries shall be taken at or dispatched from the site except between the hours of 09.00 and 23.00 on Mondays to Sundays.
7. The extraction system shall remain operational at all times that cooking is in process.
8. Within 56 days of the date of this decision, an assessment of the party wall of the proposed development with the adjoining dwelling at No.388 Derby Street shall be submitted to the Local Planning Authority. The assessment shall determine the construction of the party walls and their compliance with the sound insulation standards as specified in Approved Document E of the Building Regulations 2010 (as amended). If the party walls do not comply with Approved Document E, written details of a sound insulation scheme and its construction shall be submitted as part of the assessment to the Local Planning Authority for its written approval. Within 42 days of the approval of the noise insulation scheme the works shall be completed in accordance with the approved details and a verification report shall be submitted to the Local Planning Authority confirming that the sound insulation scheme has been implemented in full.