
Appeal Decision

Site visit made on 4 July 2017

by Rory MacLeod BA MRTPI

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

Decision date: 11th August 2017

Appeal Ref: APP/T2215/W/17/3172158

14 River View, Henderson Drive, Dartford, Kent DA1 5LB

- 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 Sukdev Bansil against the decision of Dartford Borough Council.
 - The application Ref DA/16/01038/COU, dated 20 June 2016, was refused by notice dated 28 November 2016.
 - The development proposed is "required licence A5 – hot food take away; proposed use fish and chip shop".
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the living conditions of local residents in relation to disturbance and odours, and the effect of the proposed extract system on the character and appearance of the area.

Reasons

3. The appeal relates to a vacant single storey shop unit. There is a convenience store to the southern side of the site occupying part of the ground floor to a three storey building of flats. The surrounding area is otherwise wholly residential in character comprising mainly terraces of two storey houses and buildings of flats. To the north of the site is 2 Henderson Drive, a two storey house set on lower ground.
4. It is proposed to change the use of the vacant shop unit from a 'sui generis' use (previously a tattoo parlour) to a use within use class A5, hot food take away shop. The appellant indicates that the use would be a fish and chip shop open to customers until 10pm each evening on Mondays to Saturdays. An extract system would filter and disperse fumes arising from cooking processes. Two extract ducts would be erected on the flat roof of the shop unit rising to approximately one metre in height and discharging towards the rear of the premises.
5. The proposal would introduce a level of activity during evening hours that would not be compatible with the predominantly residential character of the locality. It would be likely to result in problems of noise and disturbance for the occupiers of dwellings closest to the site through increased vehicular

- activity and customers congregating outside the premises at late evening hours when the surrounding residential area would be relatively quiet. The use may also result in problems of litter nuisance for residents living close to the site; I have no information on how this issue would be managed.
6. The occupiers of the flats directly above the convenience store would be acutely vulnerable to nuisance from odours emanating from the extract system as they have habitable room windows directly above the ducts. The first floor rear windows of 2 Henderson Drive would be close to and at the same level as the extract ducts and would also be vulnerable to nuisance from cooking odours. In my opinion, the flat roof of the shop unit is not particularly suited to the siting of an extract system due to the low level of the roof and the proximity of windows in adjacent dwellings. The technical information supporting the appeal indicates that a high volume output would be necessary to disperse fumes and that this would be likely to result in additional noise nuisance if the equipment is not of an adequate size and properly mounted. I note the comments of the Council's Environmental Health Officer in relation to the inadequacy of the extract system proposed and have no reason to disagree with these findings.
 7. The ducting would be set back from the front wall of the shop unit, and would not be readily visible to pedestrians on the forecourt to the shops. However, it would be visible from the opposite side of Henderson Drive where land levels are slightly higher and also from the windows of several dwellings in the surrounding area. Although only rising to some one metre in height above the flat roof, the two ducts would each be approximately three metres in length and would form conspicuous and incongruous features in the street scene.
 8. At the time of the decision to refuse planning permission, the development plan policies referenced were the Borough of Dartford Local Plan 1995 (Saved Policies) (DLP) and the emerging policies of the Dartford Development Policies Plan (2015) (DDPP). During the consideration of this appeal, in July 2017, the Council has formally adopted the DDPP. Substantial weight should now be attributed to its policies in accordance with Paragraph 216 of the National Planning Policy Framework (The Framework).
 9. Policy DP19 of the DDPP seeks to prevent the inappropriate location or clustering of use class A5 takeaway premises. The site is not within the network of designated centres preferred for such uses but within a residential area vulnerable to their impacts. It has not been demonstrated that there would not be material detrimental effects on the residential amenity of neighbours as a result of noise, vibration and smells and as such the proposal would be contrary to the provisions of Policy DP19. It would also be in conflict with Policy DP5 of the DDPP and with Policies B1 and R9 of the DLP which seek to ensure that the nature and characteristics of the proposed use should be appropriate for its location and should not have a detrimental effect on the local area through environmental and visual impacts.
 10. I have noted the paragraphs of The Framework drawn to my attention by the appellant and the assertion that the proposal would add to the variety and choice of services offered to local residents. These factors do not lead me to a different overall conclusion. The appellant has also invited me to use planning conditions in relation to opening hours and details of the extraction system to mitigate any impacts on residential amenity. However, given the regular late

evening hours suggested by the appellant and the inadequacies of the proposed extract system in relation to site circumstances, I consider that the use of planning conditions would not be effective in mitigating impacts arising from the proposal.

Conclusion

11. For the reasons set out above and having regard to all matters raised, I conclude that the proposal would have a significant adverse effect on the living conditions of the residents in the surrounding area in relation to disturbance and odours, and that the proposed extract system would be detrimental to the character and appearance of the area.

Rory MacLeod

INSPECTOR