



Appeal Decision

Site visit made on 12 December 2017

by K Taylor BSc (Hons) PGDip MRTPI

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

Decision date: 22 December 2017

Appeal Ref: APP/P1235/W/17/3181285

Nice N Spicy, 176 Dorchester Road, Weymouth DT3 5HU

- 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 SNS Catering (Weymouth) Ltd. T/A Nice N Spicy against the decision of Weymouth & Portland Borough Council.
 - The application Ref WP/16/00604/FUL, dated 17 August 2016, was refused by notice dated 1 February 2017.
 - The development proposed is a rear extension to the existing take-away with a Manager's Studio Flat within the roof space at first floor level.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on the living conditions of:
 - the future occupier of the proposed manager's studio flat with regard to the internal living environment particularly the size of the accommodation; and
 - the occupiers of existing nearby residential accommodation and the future occupier of the proposed manager's studio flat with regard to noise and pollution from the flues associated with the takeaway uses.

Reasons

3. Number 176 Dorchester Road is a detached two storey building. It is located in an area of mixed uses with a number of commercial properties located to both sides and opposite it. Residential uses are located in some of the upper floors of the commercial buildings as well as in the wider area including to the rear of the site. The ground floor of the building is used as a takeaway, with residential accommodation on the upper floors. The rear of the property can be accessed via a passage way which is located to one side of the building. At the rear of the building there is a single storey flat roofed extension. It appears that this is used in association with the existing takeaway.
4. The appeal development would include the erection of an extension at the rear of the building. It would be part single storey, with the area to the immediate rear of the two storey element of the existing building incorporating accommodation at first floor level. The ground floor area would provide a second takeaway with the first floor providing the manager's studio flat. Both would be accessed via the passageway to the side of the building.

Internal living environment of the manager's studio flat

5. Policy ENV12 of the West Dorset, Weymouth & Portland Local Plan 2015 (the LP) requires that development complies with the national technical standards.

Of relevance to this appeal is the *technical housing standards – nationally described space standards* (the space standards).

6. Even if only a basic kitchen were provided, the manager's accommodation would contain all the facilities required for a day-to-day private domestic existence. It would therefore have the distinctive characteristics of a dwelling. Policy ENV12 and the supporting text are clear that all new dwellings should be constructed in accordance with the space standards. It does not exclude any types of dwelling and therefore I have no reasons to reach the view that a studio flat should be exempted.
7. For a 1 bed roomed flat, intended to be occupied by 1 person, the minimum gross internal floor area required by the space standards should be 37m². The appellant's and the Council's evidence is broadly similar that the floor area of the flat would be between 32 – 32.5m². Storage could be provided beneath the stairs and there would also be some space with a headroom of less than 1.5m. The space standards are clear that the latter should not be included in the gross internal area other than as storage. The gross internal floor area of the studio flat would therefore fall short of the space standards by some margin.
8. All activities such as eating, sleeping, preparing food and resting would take place in this space. Given the small size, it would be cramped and the living environment which would be created would be poor and oppressive.
9. The appellant suggests that the accommodation is intended to be ancillary to the takeaway use and that it is not intended to be the primary residence for the manager. It would be possible to limit the occupation of the flat to an employee of the takeaway business through a condition. However the accommodation would have a separate entrance and it would not be intrinsically linked to the takeaway. In this respect it would be no different to the other residential accommodation that is found above commercial properties in the locality.
10. There is no clear information as to the extent and regularity with which a manager would be expected to reside in the accommodation. I therefore have concerns that a condition that sought to control this would not be sufficiently precise and this would also have implications for its enforceability. As the accommodation would be independently accessible and provide all the facilities necessary for day-to-day living, preventing its use as full time accommodation also does not seem to be reasonable.
11. Even if the flat were not used as a main place of residence, it would still be intended to provide living accommodation. Unless it was used only on a very limited basis, the mere fact that it would not be occupied full time is not a good reason that substandard accommodation should be permitted. A home, even if it is occupied by an employee, should still provide a pleasant environment and allow a reprieve from the work environment. The ability for the occupant of the flat to utilise some of the accommodation in the takeaway, such as the manager's office and to take meals in the staff kitchen, would not therefore act as suitable mitigation.
12. I therefore conclude that the internal living environment in the manager's flat would be poor and of an inadequate size, thus it would be detrimental to the living conditions of a future occupant. The development would not accord with Policy ENV12 of the LP which requires that development achieves a high standard of design with new housing meeting or exceeding the appropriate minimum space standard.

Noise and pollution

13. There are two extract flues attached to the building, these both relate to the existing takeaway. Both extend up the rear gable wall and run between two first floor windows which are associated with the residential use. With the appeal development, two flues would be provided and the positioning on the rear gable is shown to remain similar to the existing situation. This being the case the effect on the occupiers of existing neighbouring properties is unlikely to be any greater than the existing situation. I note that planning permission has recently been granted for a single storey rear extension with a second takeaway use. In that case the Council considered that this matter could be dealt with by a planning condition.
14. The development would introduce an additional residential use to the site. However the flues are shown to be encased in walling between the existing external wall and the internal wall of the proposed studio flat. I have no reason to doubt that adequate noise mitigation could be secured to allow for suitable living conditions within the flat. In addition, the flues would be located adjacent to the bathroom and stairwell and so separated from the main living space. As the number of flues would not increase from the existing situation it is unlikely that any other forms of pollution, such as odour, would be any more significant than currently occurs.
15. On this second main issue I conclude that the effect of the development on the living conditions of existing and future residents could be adequately mitigated by a planning condition. There would be no conflict with Policy ENV16 of the LP which seeks to ensure that development is designed to minimise its impact on the living conditions of existing and future residents including in respect of noise and unpleasant odour.

Other matters

16. The appeal scheme was submitted by the appellant in an attempt to overcome a refusal of planning permission of an earlier application for a similar form of development. The appellant has highlighted that, in refusing planning permission for the appeal scheme, there have been different reasons for refusal which were not cited when the earlier application was refused. It is apparent that the manager's flat was larger in the original scheme; therefore it is reasonable that the Council has reached a different conclusion in respect of the adequacy of the living environment for the appeal scheme. The effect of the extraction flues was not specifically cited in the decision notice for the original application; however, in light of my finding on the second main issue, it is not necessary that I comment on this apparent inconsistency.

Conclusion

17. Although I have found that any adverse impacts from the flues could be mitigated by a condition, this would not mitigate or outweigh the harm that would arise to the living conditions of the future occupier of the studio flat in terms of the internal living environment. The development would not accord with the development plan when it is taken as a whole. I conclude that the appeal should be dismissed.

K Taylor

INSPECTOR