



Appeal Decision

Site visit made on 28 October 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/P4605/W/19/3235553

Unit 2, 23 Watford Road, Stirchley, Birmingham, West Midlands B30 1JB

- 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 Mrs Maryam Ronzbahani against the decision of Birmingham City Council.
 - The application Ref 2018/10357/PA, dated 18 December 2018, was refused by notice dated 25 March 2019.
 - The development proposed is described as 'change of use Class A1 Retail to A3 Restaurant with rear kitchen extract'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed rear extraction flue on the living conditions of nearby occupiers, with particular regard to noise and odours.

Reasons

3. The appeal concerns the central ground floor unit in a short, 3-storey parade facing onto Watford Road, which is characterised by shop and similar High-Street uses in this area. To the rear of the appeal building is an area of hardstanding forming a yard to which the ground floor units have access. It is connected to Watford Road by a vehicular driveway to the side of the parade building.
4. On the upper floors of the shopping parade are several maisonettes, which are accessed via an external staircase from the rear hardstanding. At first floor level is a terrace area, which forms private amenity space for the occupiers of the maisonettes and is enclosed by open, timber-panel fencing. The maisonettes are set back some six metres from the edge of the terrace.
5. The sole matter of dispute between the main parties is the installation of an extraction flue on the rear elevation, associated with the use of the appeal premises as a restaurant. The flue would be positioned above the rear access to the appeal unit and would extend vertically upwards, so that its top would be level with the top of the open-panel fence by the first floor terrace.
6. The purpose of the flue is to remove smoke / smells from the kitchen, thereby protecting the environment within the appeal unit. However, any fumes and odours extracted from the appeal unit would be released next to the amenity

- areas of one of the maisonettes above, at a height of around one metre above the terrace.
7. Such private amenity spaces are typically used by residents for sitting out and relaxing, or drying clothes. Consequently, any smells emanating from the flue would be likely to disturb the occupiers of the maisonettes in their amenity space.
 8. Various filters are proposed to control smoke and odours from the flue, which are said to have been accepted by the Council at other unspecified restaurant locations. As I am not familiar with these locations or the details of the schemes, I can give this only very limited weight as a result.
 9. In terms of the performance of the filters I note the height of the flue above and away from the appeal premises. Consequently, the emissions from the flue remain ones that the appellant wishes to have discharged some distance away from the appeal unit. I am not, therefore, satisfied that the proposed flue would not release unacceptable odours regardless of the proposed filters. Given that the flue is located next to the private amenity space of the upper floor maisonettes, such odours would be likely to cause unacceptable disturbance to nearby occupiers.
 10. I note the information provided by the appellant regarding the noise from the extract fan associated with the flue, including relative to the background noise on Watford Road. The Council does not consider this information to be adequate in order to fully assess the noise implications.
 11. The rear amenity areas are positioned well over 10 metres away from the Watford Road carriageway, and at a higher elevation. Furthermore, they are largely screened from Watford Road by the maisonettes and the next door buildings. Consequently, I do not consider the private amenity areas to be at a 'main road location' and therefore the 'ambient background level of noise' would be likely to be less than the stated figure of 'in the region of 60 db(A) at 10 metres'.
 12. In these circumstances and given the proximity of the flue to the rear amenity area of the maisonettes, I am not satisfied that noise from the flue would not cause unacceptable disturbance to the occupiers of the maisonettes in their amenity space.
 13. The appellant has drawn my attention to what they consider to be a similar extract flue to the rear of 31 Watford Road. Whilst I am not fully familiar with the scheme at 31 Watford Road, from the evidence and my observations on site, there are significant differences between it and the appeal proposal. It is attached to the end of a rear outrigger building and extends close to the ridge height of this structure, which would significantly reduce any harmful impacts in terms of noise or odours; this is in marked contrast to the appeal flue's location next to outdoor amenity spaces.
 14. For these reasons the proposed extraction flue would adversely affect the living conditions of nearby occupiers, with particular regard to noise and odours. It would therefore conflict with Policy PG3 (place making) of the Birmingham Development Plan 2017, saved paragraph 8.7 (hot food shops and restaurants/cafes) of the Birmingham Unitary Development Plan 2005 and with the National Planning Policy Framework 2019.

Conclusion

15. For the reasons given above, and taking into account all matters raised, I conclude that the appeal is dismissed.

Andrew Parkin

INSPECTOR