



Appeal Decision

Site visit made on 10 March 2020

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/J1915/W/19/3242875
57A High Street, Buntingford SG9 9AD

- 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 Mehmet Govher against the decision of East Hertfordshire District Council.
 - The application Ref 3/18/1566/FUL, dated 29 July 2018, was refused by notice dated 6th June 2019.
 - The development proposed is Change of use from Sui Generis (Pet Hair and Beauty) to A5 Take Away (Fish and Chips).
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from Sui Generis (Pet Hair and Beauty) to A5 Take Away (Fish and Chips) and installation of new extractor flue pipe to rear elevation at 57A High Street, Buntingford SG9 9AD, in accordance with the terms of the application, Ref 3/18/1566/FUL dated 29 July 2018, subject to the following conditions:
 - 1) The development hereby permitted shall be begun three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: Location Plan and Block Plan BS18-03; Existing Plans Rev-BS19-01; Proposed Plans Rev-BS19-02.
 - 3) The premises shall be only be open for customers between the following hours only: 1200 to 2200 Mondays - Sundays.
 - 4) Prior to any use hereby permitted commencing, a scheme for protecting the existing dwellings from noise and vibration arising from the change of use, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details, and shown to be effective prior to the use hereby permitted being brought into use, and it shall be retained and maintained in accordance with those details thereafter.
 - 5) Prior to any hereby permitted use commencing, an odour impact assessment and scheme containing full details of arrangements for internal air extraction, odour control, discharge to atmosphere from cooking operations (including any external ducting and flues) and a maintenance schedule 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 with the local planning authority.

6) The finished colour of the proposed flue stack and the method of application of the finish shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of the flue stack and shall thereafter be maintained for the lifetime of the development.

Procedural Matter

2. The application forming the subject of the appeal was made by Mr Govher, as stated in the banner. The appeal is made by Mr Bahadir Sari, with the agreement of the applicant.
3. The Council has amended the description of development used in the application to include reference to the proposed flue stack and also opening times. In the interests of accuracy, the reference to the flue stack is necessary and therefore I proceed on that basis. The matter of opening times can be addressed via condition, should I be minded to allow the appeal.

Main Issue

4. The premises forming the subject of the appeal (the property) are located within the Buntingford Conservation Area. The proposal does not include any changes to the building other than the insertion of a flue stack in a side facing roof, within the passageway between the property and no 59a. The Council considers that the proposal would not affect the character or appearance of the conservation area and I see no reason to take a different view.
5. In light of the above, the main issue is the effect of the proposed change of use on the living conditions of the occupiers of nearby dwellings due to noise disturbance and odour.

Reasons

6. The property is a vacant shop unit located within the town centre and comprises approximately half the ground floor of a 2 storey building of modern construction. The other half of the building at ground floor is in use as a hot food takeaway, and at first floor there are 2 flats, nos 1 and 2 Anvil Court. To the rear of the building there are other dwellings at Anvil Court and Yew Tree Court.
7. There are concerns that the proposal would result in the residents of nearby dwellings experiencing odours and noise from the preparation of hot food, in this case fish and chips. In response to these concerns an odour filtration and noise assessment have been submitted.
8. The noise assessment¹ considered the emissions from the proposed flue, with silencer fitted, against background noise levels measured at a location within

¹ Report VA2558.190213.NIA 57A High Street Buntingford – Noise Impact Assessment dated 21 February 2019, Venta Acoustics

Anvil Court and in accordance with the methodology in British Standard BS4142:2014. The assessment shows that noise emissions from the flue would be less than the prevalent background noise levels. The assessment also considered the potential for structure borne noise, against the criteria in BS8233 and having regard appropriate mitigation such as rubber fixings to reduce the transmission of vibration. In the case of both breakout and structure borne noise the assessment found that levels would be within those recommended in the British Standard.

9. The Council's Environmental Health Officer (EHO) was not satisfied that the noise assessment report properly addressed the potential impacts on residents, since it identified the houses to the rear of the property as being those most affected, rather than the 2 dwellings at 1 and 2 Anvil Court, above the property. The EHO was particularly concerned given the sound of air discharging from the stack and the potential for vibration impacts to affect the occupants of the flat at no 2.
10. The appellant has therefore submitted a letter from his noise consultant responding to the EHO concerns. Owing to the position of the flue stack at the side of the building, the set back of 1m from external walls, and with no line of sight to the adjacent flat, the noise levels would be within background noise levels.
11. With regards to odour, a report has been submitted with the appeal by a supplier of kitchen filtration equipment² in accordance with DEFRA guidance. The report specifies the carbon filtration system which would be necessary to achieve the very high level of odour control that would be required given the proximity of residential properties to the site.
12. The Council remains concerned that the extract and filtration equipment referred to in the appellant's noise and odour report does not correspond with that which is specified in the plans. The Council suggests that it is possible that the equipment supplied may be of a size that could not be accommodated within the room sizes shown on the plans.
13. However, given the evidence before me and the potential to impose planning conditions requiring that the final specification of the extract, filtration and flue fixings must be agreed with the Council, there is no evidence to conclude that these matters would give rise to noise levels and odours which would be harmful to the living conditions of nearby residents.
14. Aside from the potential for noise and odours from the extract flue to affect living conditions, there is the possibility that the use could give rise to general disturbance from customers visiting the proposed takeaway, especially late in the evening when the town centre may be quieter. Although not raised by the Council in its reason for refusal, it was raised as a concern by the EHO, and has been mentioned by a number of interested parties. It has been suggested that there are some existing problems of late night disturbance in the area, and the addition of a hot food takeaway close to a number of other such uses could add to these problems. However, the property is in a town centre location where existing levels of activity are likely to be higher than in a residential area, and

² Purified Air, report prepared for Ali Kosele of Alko Design and Build dated 27 March 2019

there is no clear evidence before me to support the argument that the proposal would create unacceptable noise and disturbance in the local area.

15. It has been suggested strongly that the operation of the adjoining pizza takeaway business has led to problems due to noise and odours from the extract ventilation, litter, and the use of residents' bins when the trade bin for the business is full. Problems with drains becoming blocked due to grease and kitchen roll have occurred, which interested parties state were the result of the existing A5 use. The suggestion is that the proposal would be likely to add, cumulatively, to these issues. The appellant maintains that the existing use has not caused any harm to the living conditions of local residents, however I note the comment of the EHO that there is a long and ongoing history of noise and odour complaints.
16. The Council has referred to policies in the East Herts District Plan October 2018 (the District Plan) in support of its reason for refusal. The Buntingford Community Area Neighbourhood Plan 2014 – 2031 (the Neighbourhood Plan) also forms part of the development plan, and the Council has drawn my attention to Policies BE5 and BE6. Policy BE5 relates to the loss of a number of uses, including Class A5, from within the neighbourhood plan area and is therefore of limited relevance to the appeal. Policy BE6 relates to proposals for the changes of use identified under BE5, including Class A5, and states that such changes will be supported where they would not harm the living conditions of neighbouring residents and are otherwise consistent with sustainable development. In effect, the policy does not impose any additional test of acceptability in addition to those District Plan policies referred to by the Council in the reason for refusal.
17. I therefore conclude that the proposed change of use would not cause harm to the living conditions of the occupiers of nearby dwellings due to noise disturbance and odour, subject to necessary planning conditions, and would conform to Policy DES4 and Policy EQ2 of the District Plan and Policy BE6 of the Neighbourhood Plan, which amongst other things require that proposals should minimise direct and cumulative noise impacts, particularly where close to noise sensitive uses, and be supported by a noise assessment; and should avoid significant detrimental impacts on the occupiers of neighbouring properties and land.

Other Matters

18. Interested parties say that there are existing problems due to parking of customer cars visiting the hot food takeaway at no 57 obstructing access to the residential properties to the rear of the property. The appellant suggests that most sales will be delivery based³, but even if that were to be the case there would still be the coming and going of cars collecting meals for delivery. However, the Highways Authority did not object to the application but commented that waiting restrictions are in place and on street parking spaces exist nearby. Regarding the storage of waste, the Council does not assert that there is any problem, and as commercial premises within a town centre location it is reasonable that the property should be provided with a trade bin of enough capacity to serve its needs.

³ The comment is included in application plan Rev-BS19-02

19. The Council has not raised a concern regarding the visual appearance of the flue stack, and states that it would not be visible from the High Street. Given the height and position of the flue when viewed from within the courtyard to the rear, it would be a noticeable feature, although not obtrusive if colour coated to an appropriate colour. The application plans propose that the stack would be painted matt rosemary red to match the roof tiles. The colour and a robust means of application should be agreed with the Council to avoid any problems of paint peeling as a result of the heat of the stack.

Conditions

20. I have considered the conditions suggested by the Council against the tests of the Framework and advice provided by the Planning Practice Guidance. I find the majority to be reasonable and necessary in the circumstances of this case and some have been edited for consistency and clarity.
21. For certainty I attach the standard planning condition limiting the period of the consent to 3 years and a condition requiring the development to be carried out in accordance with the approved plans.
22. The proposal, as originally submitted, proposed the opening hours 900 to 2300 hours. The Council suggests that the opening hours are limited to 1200 – 2200 which the appellant has not disagreed with. I consider that a condition limiting the opening hours to 1200 -2200 is necessary in order to reduce any potential for late night disturbance which could affect local residents.
23. The appellant has suggested the form of planning conditions to require the submission of details of air extraction plant, including measures for odour control and a maintenance regime and the control of noise emissions⁴. The Council suggests similar planning conditions relating to odour impact and the arrangements for air extraction and the control of noise and vibration. Notwithstanding the information already submitted by the appellant it is important that these details are subject to final approval to ensure that any potential issues of noise disturbance and odours from the extract plant are fully mitigated and I therefore attach 2 conditions to cover these matters.
24. As mentioned above, a condition is attached requiring the finished colour of the flue stack to be agreed with the Local Planning Authority. The appellant agrees to the attachment of the condition, together with the conditions relating to the details of the air extraction plant and noise.

Conclusion

25. For the above reasons and taking account of other matters raised, the appeal is allowed.

Tim Wheeler

INSPECTOR

⁴ Included on application plan Rev-BS19-02