



Appeal Decision

Site visit made on 19 May 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/U1105/W/19/3237187
20 New Street, Honiton, Devon EX14 1EY

- 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 H Oflaz against the decision of East Devon District Council.
 - The application Ref 19/0439/FUL, dated 28 February 2019, was refused by notice dated 16 July 2019.
 - The development proposed is creation of separate ground floor restaurant unit and separate first and second floor residential unit from shop and living unit.
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Decision

1. The appeal is allowed and planning permission is granted for creation of separate ground floor restaurant unit and separate first and second floor residential unit from shop and living unit at 20 New Street, Honiton, Devon EX14 1EY in accordance with the terms of the application, Ref 19/0439/FUL, dated 28 February 2019, subject to the condition in the attached schedule.

Procedural Matter

2. There was representation made to the Council that the owner of the rear passage giving access to the site had not been notified of the planning application. It is not clear whether that was resolved by the Council at application stage. However, there is no substantive evidence that the correct ownership certificates have not now been completed. As that party commented on the proposal and was notified of the appeal, I am satisfied that no injustice would occur if I were to proceed to determine the appeal.

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring residents with particular regard to noise, disturbance and privacy.

Reasons

4. The site is a mid-terraced building with small rear yard in an area of high-density built form. I understand that neighbouring properties both contain residential uses and that there are no other restaurants in the vicinity, on the appeal site side of New Street.
5. The proposal would result in a rear, single-storey, section being used as a commercial kitchen to serve a ground floor restaurant. The location of the kitchen could result in a greater level of noise emission from general kitchen

- activity, particularly if windows were opened, and from the rear yard area, if used by staff accessing bins, taking breaks and the like.
6. The proposal would include an extraction unit with flue extending from the flat roof of the kitchen, up the side of the building, along the roofline and to a chimney on the main roof. There are also windows within the roofspaces of nearby properties, close to the discharge point of the flue.
 7. The equipment would be designed to minimise rather than eliminate noise and odour. However, the Council's Environmental Health Officer is satisfied that the specification of the unit would prevent any noise or odour from the unit causing harm to the living conditions of neighbouring residents. There is no substantive evidence to lead me away from that conclusion, or that it may not be properly maintained to ensure appropriate noise levels in the future.
 8. Noise from staff activity within the building and yard area would be harder to control. However, the hours of operation can be restricted such that trading should cease after 2300. Whilst this is relatively late, and some staff activity is likely to continue beyond that time, I understand from the Council's officer report that it is not uncommon for restaurant uses to coexist alongside residential ones. I have no substantive evidence that such relationships have resulted in demonstrable harm to living conditions of neighbours elsewhere, or why this site should be different to any other.
 9. There is also potential for noise transmission between the upper floor residential unit and its adjoining neighbours, particularly as the plans show the main kitchen/living accommodation at second floor level, alongside neighbouring bedrooms. However, the appellant indicates that noise transmission in new accommodation would be controlled by the building regulations. Even if this were not to be the case, I understand that there is currently residential accommodation within the upper floors of No.20 and there is nothing to suggest that there is any control over the way in which that space is used. I, therefore, give this matter limited weight.
 10. As the above findings indicate that there would be no harm arising from noise impacts, there is no need to consider further mitigation or whether any offsetting requirements set out in the Planning Practice Guidance¹ apply.
 11. Turning to privacy, the proposal would provide access to the upper floor residential unit via a new external staircase. This would cross the single storey rear section and so provide considerable length over which somebody accessing the accommodation could look towards neighbouring property windows. On egress, there could be views over the neighbouring garden areas.
 12. The staircase would be close to the boundary with No.18. Its position beyond the single storey section means that users would have opportunity to look over the boundary towards the rear elevation of No.18. However, a proposed privacy screen would obscure direct views and that screen would not have a detrimental effect on outlook as it would be sited alongside a first floor access door and replace an existing, similar structure.
 13. There would be clearer views of the garden area of No.18 when descending the proposed staircase as the screen would be of insufficient length to obscure those views. No.18 has a small garden area that affords some limited space for

¹ Such as at paragraph ID: 30-011-20190722

sitting out. However, the area is not altogether private as it is already overlooked to some degree by first floor windows of flats that face towards it and another external access staircase serving the first floor of those flats.

14. The first floor of No.22 is also served by an external staircase, that affords views over the rear yard at the appeal site and vice versa. Accordingly, the external spaces at No.22 are not altogether private either. In this context, given that it would only be practical to use the proposed staircase and flat roof crossing for access purposes, any increase in overlooking would not be so significant as to result in a harmful loss of privacy.
15. Whilst neighbouring residents may not have planned to live close to a restaurant, I, therefore, find that the proposal would not harm the living conditions of neighbouring residents and there would be no conflict with those aspects of Policies D1, E9, E10 or E14 of the East Devon Local Plan 2013-2031 that seek to protect the amenity of occupiers of adjoining residential properties and avoid pollution through noise, vibration or odour.

Other matters

16. There is suggestion in the representations that there is insufficient evidence that the existing shop unit is unviable and so it should not be allowed to change to a restaurant use. I note that LP Policy E10 requires that a building or site within the primary shopping frontage is marketed for up to two years before changes to non-retail uses are permitted. However, whilst there may be other empty restaurant premises elsewhere in the town, the Council's officer report indicates that the previous use fell within Use Class A2² and so there would be no loss of retail facilities. On this basis, I have no reason to disagree with the Council that the proposal would not have a neutral effect on the retail function, vitality and viability of the primary shopping area.
17. Space has been indicated on the plans, within the site, for the storage of refuse. There is no substantive evidence that this would be insufficient, that it would spill into the rear access passageway, or that that access or emergency egress would become blocked for any other reason.
18. New Street is relatively narrow and, whilst there appear to be parking restrictions during the day, indiscriminate parking during the evening could cause a hazard and impede the free flow of traffic. However, it is ultimately a driver's responsibility to use the highway in a manner consistent with the Highway Code and such is, therefore, of very limited weight in my decision.
19. The extraction system would be industrial in design and somewhat at odds with the small, domestic-scale character of surrounding properties. However, it would be sited to the rear of the existing building in an area where there is already a notable presence of external additions such as access staircases. In this context, the proposal would preserve the character and appearance of this part of the conservation area and not harm its significance.
20. I understand that work may already have started and there is concern over the stability of the chimney. However, these matters have little to do with the planning merits of the case that I have assessed on the basis of the evidence before me. Concern has also been raised over the control of takeaway uses, but this is not the development that has been applied for.

² As defined in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)

Conditions

21. A plans condition is required in the interests of certainty. To protect the living conditions of neighbouring residents, conditions are required to secure the provision of a privacy screen on the site boundary, the installation of an extraction unit and control over the hours of operation in accordance with the Environmental Health Officer's recommendations. A condition requiring the extraction system to be painted black is required in the interests of the character and appearance of the area.
22. I have made some revisions to the Council's suggested list of conditions in the interests of clarity and to ensure compliance with the National Planning Policy Framework.

Conclusion

23. I have found that there is no conflict with the development plan. None of the other matters raised before me, or any other material considerations indicate that a decision should be taken otherwise than in accordance with the development plan.
24. Therefore, the appeal is allowed.

M Bale

INSPECTOR

SCHEDULE OF 6 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 accordance with the following approved plans: Location Plan; MO/EDDC/P1; MO/EDDC/P2 rev B; Proposed Extract Ventilation for Restaurant.
- 3) Prior to the first occupation of the residential unit hereby permitted a privacy screen shall be erected to the north side of the external access stairs and first floor entrance deck in accordance with details that shall have been previously submitted to and approved in writing by the Local Planning Authority. The screen shall then be permanently maintained and retained in accordance with the approved details.
- 4) Prior to the first use of the property as a restaurant/café, the extraction system detailed in the specification letter from Phoenix Fabrications (South West) Ltd. dated 30 May 2019 and as shown on the accompanying 'Proposed Extract Ventilation for Restaurant' plan and detailed equipment specifications, shall be installed and brought into use. Thereafter, the extraction system shall only be operated between the following hours: 1000 - 2330.
- 5) Notwithstanding the requirements of condition 4, before the extraction system is first brought into use, all external components shall be painted matt black and thereafter maintained as such.
- 6) The restaurant/cafe premises shall only be open for customers between the following hours: 1000 - 2300 hours.