



Appeal Decision

Site visit made on 7 July 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/G3110/W/21/3267104

142 London Road, Headington Oxford OX3 9ED

- 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 Raveenrakumar S against the decision of Oxford City Council.
 - The application Ref 20/02330/FUL, dated 18 September 2020, was refused by notice dated 9 December 2020.
 - The development proposed is described as: INSERT THE CANNOPY TO CHANGE OF USE AS A3 [NEW USAGE OF E CLASS].
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appellant's description of the proposal refers to the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. These regulations came into force on 1 September 2020, among other things, these create a new 'Commercial, business and service' use class (Class E), which incorporates the previous restaurants and Cafés (A3) (and other uses that need not concern me here).
3. Furthermore, and notwithstanding the appellants description of the proposal, the submitted design and access and appeal statements refer to the proposed use of the property for A3 and A5 (hot food and takeaway) uses. The Council determined the application on that basis, and I have proceeded with the appeal on the same basis.
4. During the appeal the appellant provided an environmental noise survey¹. As this is intended to address part of the Council's reasons for refusing the application and because the Council are aware of it, I have accepted this as evidence, and I do not consider that the interests of any other party have been prejudiced by my doing so.
5. Since the appeal was lodged a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released, the main parties have been consulted on this and I have taken this into account where relevant to my Decision.

¹ Planning Compliance Report (Report 21732.PCR.01)

Main Issues

6. The main issues are: the effect of the proposed extraction flue on the character and appearance of the area; the effect of the proposed change of use and extraction flue on the living conditions of neighbours; and, whether the proposal makes adequate arrangements for waste storage and collection.

Reasons

Character and appearance

7. The main external alteration arising from the proposal is the installation of an extraction flue. This would be located along the rear elevation of the appeal property, extending at first floor level and marginally above its ridge. It would also be partly screened by existing built development. Therefore, this would not have any discernible effect on views from along London Road. Some views of the extraction flue would be available from the rear of the appeal property. However, in the context of a district centre which includes a range of commercial premises, some of which include similar extraction flues along their rear elevations, the presence of the proposed extraction flue would not unacceptably detract from the character and appearance of the area. I therefore find no conflict with Policy DH1 of the Oxford Local Plan 2036 ('LP') which amongst other things, seeks to secure high quality design and place making.

Living conditions of neighbours

8. The submitted environmental noise survey confirms that subject to proposed noise control measures, the amenity of nearby residential receivers would be protected from the use of the proposed extraction flue.
9. However, the rear access to the appeal property and the kitchen window would be in close proximity of neighbouring residential properties. This includes a flat above the appeal property and those to the side and rear of it. Therefore, these flats would be particularly sensitive to noise and disturbance. As such, activity associated with the use of the rear access and loud conversations with sudden outbursts of shouting from staff, in combination with the proposed late opening hours, has the potential to generate significant noise and disturbance.
10. In terms of controlling cooking odours, although I have been provided the name of the proposed odour management system, the evidence before me does not include any technical specifications for this. Therefore, I cannot be certain of its efficacy or efficiency to manage cooking odours, particularly given the arrangement of nearby residential units relative to the appeal site. In particular, given the proximity of dwellings to the appeal site, the onus is on the appellant to show that the living conditions of their occupiers would be safeguarded.
11. For the above reasons, the proposed change of use and extraction flue would have an unacceptable effect on the living conditions of neighbours in respect of noise, disturbance and cooking odours and would be contrary to Policy RE7. This Policy only supports planning permission for development which ensures that the amenity of communities, occupiers and neighbours is protected. I also find conflict with Policy RE8 of the LP, insofar as this aims to support proposals which manage noise to safeguard or improve amenity, health, and quality of life.

Arrangements for waste storage and collection

12. The appellant has provided a photograph highlighting a bin for the storage of waste and confirmed that the collection of the waste would be via the existing arrangement. However, it is unclear what the existing arrangement is and whether the area shown on the photograph is land within the appellant's control.
13. Moreover, because external areas to the rear of the appeal property are close to existing dwellings, the inappropriate siting and management of waste storage facilities could result in an unsightly appearance and odours, which would be to the detriment of the amenity of neighbours. Therefore, it is important that details of waste storage and collection are not left to conditions.
14. Consequently, the proposal fails to demonstrate how waste would be stored and collected from the appeal site and is in conflict with Policy DH7 of the LP, which amongst other matters, requires that bin stores and external servicing features are provided in a way that does not detract from the overall design of the scheme or the surrounding area, whilst meeting practical needs and are an integrated part of the overall design or are positioned to minimise their impact.

Other matters

15. The proposal supports economic development and may also fulfil a local need for the type of facility proposed. Nonetheless, these factors do not outweigh the harm I have identified.

Conclusion

16. I have found that the proposed extraction flue would not harm the character and appearance of the area, I have also found that the proposal would harm the living conditions of nearby residents in respect of noise, disturbance and cooking odours, and the scheme fails to demonstrate appropriate facilities for the storage and collection of waste, for these reasons and conflict with the development plan, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR