



Appeal Decision

Site visit made on 31 August 2021

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/X1925/W/21/3271917

1-3 The Mead, Hitchen, Herts, SG5 1XZ.

- 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 J Patel against the decision of North Hertfordshire District Council.
 - The application Ref. 20/00547/FP, dated 3 February 2020, was refused by notice dated 20 October 2020.
 - The development proposed is the part change of use from retail (Use Class A1) to Hot Food Takeaway (Use Class A5) and installation of an extraction system.
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Decision

1. The appeal is allowed and planning permission is granted for the part change of use from retail (Use Class A1) to Hot Food Takeaway (Use Class A5) and installation of an extraction system, at 1-3 The Mead, Hitchen, Herts, SG5 1XZ, in accordance with the terms of the application, Ref. 20/00547/FP, dated 3 February 2020 and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Main Issues

2. The application follows an appeal decision (APP/X1925/W/18/3216420) for a similar proposal for a change of use of the premises. This appeal was dismissed principally for the reason that the inspector concluded that the external flue system needed to facilitate the change of use would harm the character and appearance of the host property and the surrounding area. The present scheme modifies the external flue arrangement proposed.
3. In this context the main issues are:
 - The effect on the living conditions of the occupiers of first floor flats above 1-3 The Mead; and
 - The effect on the character and appearance of the host property and the surrounding area.

Reasons

Background

4. The appeal premises relate to the right hand ground floor unit in a two storey building which has two retail units on the ground floor and residential flats above with access via an external staircase at the side of the building leading to a first floor accessway. The building, which functions as a local neighbourhood centre,

lies in a mainly residential area with a variety of house types around it in addition to the flats at first floor.

5. The appellant refers to the previous appeal decision and indicates that the design of the external flue has been modified so that it would not now have a 'contrived course up the side of the building' as identified by the previous Inspector. It would no longer have a metal finish as it would be clad in brick effect panels and the element that extended above the plane of the roof to the same height as the ridge would be painted black.

Effect on living conditions

6. This issue was not raised by the Council in the previous appeal but the effect on the occupiers of the flats above was the sole reason that the Council refused permission in this application contrary to the officer recommendation. In considering the Council's case I have read the minutes of the Planning Committee meeting of the 10 February 2021, and the representations submitted by local people to the application.
7. At my site visit I noted the nature of the host appeal building and particularly the flank wall of the building facing east which contains a solid door, a ground floor and a double pane window and small window at first floor together with the external steps to the flats with access off the walkway at first floor. The proposed flue would exit the building high on the ground floor and be clad up to the plane of the roof with the black metal element above.
8. In terms of the potential effect of the flue on the residential environment of the flats above, this is likely to be in the form of the cooking odours being emitted and the noise from any extraction system. The appellant submits general details of the extraction and filtration system proposed and these appear to be typical for an operation of this kind. Further, I note that the Council's Environmental Health Officer does not raise objection to the principle of the proposal subject to details of the system being submitted, agreed and implemented before the use commences and these requirements can be imposed through planning conditions.
9. With a proper odour control and extraction system installed, and with the flue discharging at the roof ridge height of the building, I am satisfied that the proposed hot food take-way use would not be likely to cause harm to the living conditions of the occupiers of the flats above the premises. As such the proposal does not conflict with saved Policies 8 and 57 of the District Local Plan 2007, where relevant, or Policy D3 of the emerging Local Plan concerned with protecting living conditions.

Effect on character and appearance

10. I agree with the previous Inspector who described the host building as 'unexceptional architecturally' and it has a mostly functional form in its role as a local centre. In this revised case the proposed external flue has been simplified in its position and alignment. Moreover, the main section would be boxed in a matching brick effect enclosure and the appellant has supplied photographs of where this has been undertaken successfully elsewhere. I find that this solution would not visually harm the appearance of the host building or appear 'out of keeping' with the residential nature of the surrounding area. There is no conflict

with Policy SP9 or D1 of the emerging plan. This is a material change from the previous appeal decision.

Other matters

11. Local people also raise other objections to the proposal. Some of these raise a fear of aspects arising from a take-away that can be described as anti-social behaviour but there is no clear evidence before me that these concerns are bound to arise with the proposed use and the hours of operation can be controlled to avoid unsociable times. I am also satisfied that there is adequate parking provision locally for the intended use and I note that the Highway Authority did not raise objection to the proposal. There could be some local impact during construction work but this would only be for a limited period and not be a permanent intrusion. Finally, I understand the concern about a fire risk but this has to be addressed under other legislation separate to the planning process. Overall, I find that the other matters raised do not carry significant weight in the planning decision.

Planning Balance

12. On the main issues I have found that the proposed change of use would not have a harmful effect on the living conditions of the occupiers of the residential flats at first floor level as the noise and odour likely to arise from the cooking of hot food can be addressed through the submission, agreement and implementation of suitable extraction and filtering equipment and this can be a conditioned requirement on any permission. Further, in terms of the appearance of the external flue, the proposal has been modified and the design and form of this will not harm the appearance of the host building or the surrounding area. On this basis the proposal accords with rather than conflicts with the provisions of the development plan and emerging policy where relevant.
13. I am also satisfied that the proposal broadly accords with the guidance set out in the National Planning Policy Framework when read as a whole as this seeks to encourage social and business development while ensuring safe and healthy communities and well-designed places.
14. Although the local community raises other objections to the proposals these are not of such weight to provide clear reasons to refuse permission or outweigh the above main factors. The appeal should therefore be allowed.

Conditions

15. The Council recommends eight conditions. In addition to the conditions on the commencement of the development (no.1) and accord with the submitted plans (no.2), the permission is dependent on the submission, agreement and implementation of further details to avoid harm to the living conditions of neighbours so I will impose conditions 3 and 4. In order to maintain the character of the area and residential amenity I will limit the permission to hours that are not anti-social as per condition 6 and limit the hours when deliveries and refuse collection can take place for similar reasons. It is also reasonable for any hot food operation to implement measures to avoid litter and waste locally and I will impose condition 7 in the interests of amenity. Finally, a condition requiring the implementation of the brick cladding to the external flue is reasonable and necessary in the interests of the appearance of the area.

Conclusions

16. For the reasons give above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of 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 wholly in accordance with the details specified in the application and supporting approved documents and drawing tc/0314/pp/06.
- 3) Prior to the commencement of the development the developer shall carry out a noise survey following the guidelines set out by BS4142: 2014. This survey shall take into account all proposed plant as part of the development and shall include noise control measures which should be submitted for written approval by the Local Planning Authority (LPA). No plant shall be installed and operated at the site until the noise survey has been approved by the LPA. Noise mitigation measures shall be such as to achieve 5dB below existing background noise levels.
- 4) Prior to the commencement of the use and the installation of the kitchen extract ventilation system hereby permitted, details of the proposed system to be used as part of the development shall be submitted to the Local Planning Authority for approval. The extract ventilation system shall incorporate a three stage carbon filtration or similar system. Following approval and installation, the system shall thereafter be permanently maintained as per the approved specification.
- 5) Goods vehicle deliveries and refuse vehicles shall only be permitted between 08.00hrs and 20.00hrs Monday to Friday, 09.00hrs and 18.00hrs Saturdays and no deliveries on Sundays and Bank Holidays.
- 6) The hot food take-away premises shall only be open for customers between the following hours: 10.00hrs until 22.00hrs Monday to Sunday.
- 7) Prior to the commencement of the use hereby permitted, details of measures to deal with litter and waste arising from the proposed use shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be implemented prior to the first use, and thereafter retained.
- 8) Prior to the commencement of the use hereby permitted the proposed brick cladding to the external flue shall be put in place as per drawing tc/0314/pp/06 and shall have a finish to match the brick of the host building. The brick cladding and the blank painted flue shall thereafter be retained for so long as the use remains.