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## Appeal Decision

Site visit made on 10 May 2022

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27/05/2022**

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**Appeal Ref: APP/B5480/W/21/3288511**

**4 Carlton Road, Romford RM2 5AA**

- 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 MD Mamun Ul Ghoni against the decision of the Council of the London Borough of Havering.
  - The application Ref P0998.21, dated 19 May 2021, was refused by notice dated 22 October 2021.
  - The development proposed is installation of kitchen extraction system with ducting fitted to rear elevation.
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### Decision

1. The appeal is allowed and planning permission is granted for installation of kitchen extraction system with ducting fitted to rear elevation at 4 Carlton Road, Romford RM2 5AA in accordance with the terms of the application, Ref P0998.21, dated 19 May 2021, subject to the conditions set out in the Schedule at the end of this decision.

### Preliminary Matters

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. The decision notice also refers to a revised application form received by the Council on 21 September 2021. I consider the description as given on the decision notice and subsequent appeal documents to accurately represent the proposal and I have therefore used it within this decision.
3. On the Questionnaire, the Council requested that I enter the site to assess the impact of the development on the amenity of neighbouring properties. However, I was able to view the site from publicly accessible land to sufficiently assess the effects of the proposal, including in respect of flats on the upper floor of the parade as well as properties to the rear.
4. Subsequent to making its decision, the Council has adopted a new Local Plan 2021 (the Local Plan), which supersedes the Local Development Framework Core Strategy and Development Control Policies Development Plan Document 2008 referred to in the reason for refusal. The Council has specified which policies of the Local Plan it considers to be relevant, and the appellant has had the opportunity to comment on these. I have therefore determined this appeal on the basis of the development plan as it stands at the time of my decision.

## **Background and Main Issue**

5. The application form states that this vacant property was last used as a newsagents. Previous proposals for restaurant and hot-food takeaway uses at this site have been dismissed on appeal<sup>1</sup> due to harm arising from noise and disturbance.
6. However, since the date of those appeal decisions, the Use Classes Order has been amended, with the result that the appeal site is now within Class E (Commercial, Business and Service). Class E includes restaurant type uses, namely those for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. A lawful development certificate has been issued by the Council which establishes that planning permission is not required for use of the appeal site as Use Class E.
7. The appeal proposal therefore relates to works including the installation of a kitchen extraction system, rather than the principle of a change of use.
8. On that basis, the main issue is the effect of the proposal on the living conditions of nearby residents with regards to noise and odour.

## **Reasons**

9. The appeal site is part of a small parade of properties, with commercial uses on the ground floor and residential properties on the upper floor.
10. The proposed extraction system would include a flue located to the rear of the property. The nearest residential properties which may be affected by the proposal are those on the first floor of this parade as well as residential flats to the rear.
11. However, the extraction system and ducting would be sited so that it would be set away from windows on the rear elevation of the block. This would minimise the effect of noise and fumes on residents of the upper floor flats. Conditions could also be used to ensure that the proposal is effective in addressing issues of both odours and noise, in respect of the flats within the parade and in the wider area, including the flats to the rear. This would be the case even late at night, or in periods of good weather when residents may wish to open their windows or enjoy external amenity areas.
12. Indeed, I am mindful that the proposal is intended to address issues of noise and odour arising from the lawful use of the ground floor of the premises. There is no evidence before me that the arrangement of the site is such that an extraction system of the form proposed would not be effective in addressing these matters. Details of the food to be cooked at the property have not been provided, but this is a matter which could change over time. In any event, it has not been demonstrated that a suitable extraction system would be incapable of addressing changes in the form of food prepared.
13. Subject to appropriate conditions, I consider that the proposal would address issues of noise and odour. In this respect, although the Council's Public Protection Officer refers to noise issues, their comments indicate that these can be addressed by conditions.

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<sup>1</sup> Appeal Refs: APP/B5480/W/19/3242377 and APP/B5480/W/19/3242379, dated 12 May 2020.

14. I conclude that the proposal would not harm the living conditions of nearby residents in respect of odour or noise, subject to the imposition of appropriate planning conditions. The proposal would therefore not conflict with the amenity requirements of policies 7 and 34 of the Local Plan. The proposal would also not conflict with the National Planning Policy Framework with regards to providing a high standard of amenity for existing and future users of land and property. The Council refers to policy 26 of the Local Plan, although this relates to matters of urban design and is not relevant to this main issue.

### **Other Matters**

15. Due to the arrangement of the property, the proposal would be visible from the public realm of Junction Road as well as from dwellings to the rear of the site. However, given the utilitarian appearance of the rear elevation of the block containing the appeal site and the limited scale of the proposal, I do not consider that the development would be an unduly obtrusive or incongruous feature in views of the site.
16. Reference has been made to the potential for the premises to operate as a hot-food takeaway. However, this matter does not fall within the remit of this appeal as the lawful Class E use of the property has been determined by the Council. Uses which do not fall within Use Class E would be subject to other controls, including potential enforcement action by the Council.

### **Conditions**

17. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. As a result, I have made minor amendments to some of them for clarity.
18. In addition to the standard 3 year time limitation for commencement, a condition requiring the development to be carried out in accordance with the submitted plans is necessary to provide certainty. A condition in respect of materials is appropriate in the interests of character and appearance. Details of the installation of equipment to address odours are required in the interests of the living conditions of residents in the area.
19. A scheme in respect of noise levels is appropriate in the interests of the living conditions of nearby residents. These details should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of works. The appellant has agreed to the principle of this pre-commencement condition in their Statement of Case.
20. A scheme to control the transmission of noise and vibration is also required in the interests of the living conditions of nearby residents.
21. Comments from the Council's Waste and Recycling team refer to waste storage and collection. However, these matters relate to the principle of the use of the site, which for reasons stated previously is not within the remit of this appeal.

### **Conclusion**

22. For the reasons given above, I conclude that the appeal should be allowed.

*David Cross*      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 in accordance with the following approved plans:
  - 1) 2076-P01
  - 2) Ordnance Survey map reference TQ5188NE
  - 3) Site Address: 4 Carlton Road, RM2 5AA – (Proposed ground floor plan)
  - 4) Outside ventilation
  - 5) Elevation: Outside back – Ventilation ducting
  - 6) Elevation: Outside back
  - 7) Elevation: Side Elevation of Ducting
- 3) The proposed development hereby approved shall be constructed in accordance with the materials detailed under Section 14 of the application form unless otherwise agreed in writing by the Local Planning Authority.
- 4) Before the development hereby approved is brought into use, suitable equipment to remove and/or disperse odours and odorous material should be fitted to the extract ventilation system in accordance with a scheme submitted to and approved in writing by the Local Planning Authority. The approved equipment shall be installed on site and certification provided by a competent engineer. Thereafter, the equipment shall be properly maintained and operated within design specifications during working hours.
- 5) Before any works commence, a scheme for any new plant or machinery shall be submitted to and approved in writing by the Local Planning Authority to achieve the following standard. Noise levels expressed as the equivalent continuous sound level LAeq (1 hour) when calculated at the boundary with the nearest noise sensitive premises shall not exceed LA90 -10dB. The development shall be implemented in accordance with the approved details prior to being brought into use, and shall be maintained thereafter to the satisfaction of the Local Planning Authority.
- 6) Before the development hereby approved is brought into use, a scheme to control the transmission of noise and vibration from any mechanical ventilation system installed shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the development hereby approved being brought into use. Thereafter, the equipment shall be properly maintained and operated during normal working hours.

### **End of Schedule**