



Appeal Decision

Site visit made on 3 January 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/P4605/W/22/3306837

48-50 High Street, Harborne, Birmingham B17 9NE

- 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 Zahir Ahmed of Allmid Limited against the decision of Birmingham City Council.
 - The application Ref 2022/03777/PA, dated 8 May 2022, was refused by notice dated 26 July 2022.
 - The development proposed is described as the 'alterations to the rear of the unit, 48-50 High Street, Harborne B17 9NE to provide extraction system including a flue'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupants of neighbouring residential properties, with particular regard to odour and noise.

Reasons

3. The appeal site lies within the retail centre of Harborne. The appeal property is a vacant unit within a building comprising commercial uses at ground and first floor and residential properties on the upper two floors. Near the site are a mix of uses including shops, restaurants, banks and public houses.
4. The proposed ventilation system would be located on a rear external wall below the upper floor residential properties, in close proximity to the shared terraced area, private balconies and rear facing windows of such properties.
5. The submitted Ventilation Statement (VS) indicates that where, as in this case, the discharge of extracted air is less than 1 metre above the roof eaves or dormer window of the building housing the commercial kitchen, then an exceptionally high level of odour control will be required. Whilst the extraction system design details are provided within the VS this does not clearly demonstrate the level of odour control that would be achieved. The VS lacks definitive site-specific information to persuade me that the proposed system would satisfactorily treat and disperse nuisance odours at this site in circumstances where the discharge point is below the sensitive receptor. It has not, therefore, been demonstrated that the living conditions of the occupants of the residential properties on the upper floors, in particular the enjoyment of the external space, would not be unacceptably harmed as a result of odours.

6. The VS indicates that the proposed system meets the noise criteria set within the BS4142 method for rating industrial noise affecting mixed residential and industrial areas guidance which indicates that noise levels at nearby noise sensitive receivers should be 5dB(A) below local area background noise levels. In the absence of any case to the contrary, I have no reason to conclude that this is not an appropriate criteria against which to assess the proposal. The VS, however, does not include any information as to what the background noise levels are in the local area. In the absence of such information, and without an assessment as to how the proposed ventilation system could achieve the recommended noise levels, it has not been demonstrated that the proposed development does meet the BS4142 noise criteria, and that the living conditions of nearby residents would not be unacceptably harmed.
7. I note the Council did not request any additional information before refusing planning permission. Nonetheless, the onus is on the developer to provide the necessary information. As it stands insufficient information is before me to assess what levels of odour and noise mitigation may be necessary to avoid a detrimental impact on the living conditions of nearby residents. I have considered whether conditions could be utilised to secure mitigation measures, but as I have insufficient evidence to ascertain what mitigation is required, it would not be an appropriate approach to take in this case.
8. I therefore conclude that the proposed development will unacceptably harm the living conditions of the occupants of the neighbouring residential properties due to odour and noise. As such, it would fail to comply with Policy PG3 of the Birmingham Development Plan 2017, which seeks to ensure that development reinforces or creates a positive sense of place. It would also conflict with Policy DM2 of the Birmingham Plan 2031 Development Plan Document which seeks to ensure that development is appropriate to its location and does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. It would also be contrary to the guidance set out in paragraph 174 of the National Planning Policy Framework.

Conclusion

9. For the reasons set out above, I conclude that the proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
10. Accordingly, I conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR