



Appeal Decision

Site visit made on 28 February 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal Ref: APP/P4415/W/22/3306966

Unit 3, 77 High Street, Maltby, Rotherham S66 7BL

- 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 DPA (London) Ltd against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2021/1845, dated 15 September 2021, was refused by notice dated 18 March 2022.
 - The development proposed is change of use from retail (Class E) to hot food takeaway (Sui Generis).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from retail (Class E) to hot food takeaway (Sui Generis) at Unit 3, 77 High Street, Maltby, Rotherham, S66 7BL in accordance with the terms of the application, Ref RB2021/1845, dated 15 September 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant has added to the information they supplied with their application to the Council. This includes revised opening hours for the proposed development and supporting evidence, in the form of an updated Noise Assessment¹, an EMAQ Risk Assessment for Odour (the Odour Assessment)² and an updated proposed ventilation system³. As this information formed part of the appellant's Statement of Case, and the Council has had the opportunity to consider and comment on it as part of the appeal process, I am satisfied that my consideration of this information would not be prejudicial.

Main Issue

3. The main issue is the effects of the proposed development on the living conditions of nearby residents with regard to noise and disturbance and odour.

Reasons

4. The appeal property is the end unit in a small terrace of commercial properties within the designated Town Centre of Maltby. The area surrounding the appeal site has a mixed use character. There is a range of commercial uses within the terrace. Across High Street from the site are further commercial uses which lie within the Primary Shopping Area. There are a number of dwellings on the

¹ Noise Assessment, Philips Acoustics Ltd, August 2022 (reference:21161-002 Revision A)

² Prepared by All Ventilation & Extraction Ltd, 25/08/2022

³ Prepared by All Ventilation & Extraction Ltd, 25/08/2022

- same side of High Street as the appeal property, including no. 75 which sits adjacent, and a residential care home near to the rear.
5. When considering the nature of a hot food takeaway use, there is the potential for noise and disturbance from both the operation of plant and from customers to impact on the living conditions of nearby residents.
 6. The Noise Assessment has regard to the proposed plant that would be required to provide extraction associated with the takeaway use together with the proposed air conditioning unit and cold room condenser unit. The potential noise impact is calculated and rated with regard to BS4142⁴. The extraction route would exit the property to the rear. The air conditioning unit and cold room condenser unit would also be located on the rear elevation of the appeal property. Subject to the inclusion of the specified noise reduction treatment being fitted to the extraction system, the Noise Assessment calculates that the noise generated from the proposed equipment operating at the same time would be below the measured representative background noise limits at the nearby noise sensitive receptors. On this basis, subject to the incorporation of the required noise reduction treatment, the proposal would not be unacceptable in this respect.
 7. The Noise Assessment also includes an assessment of noise likely from delivery and customer vehicles by comparing the proposed development with the existing noise climate. To establish the existing noise climate, a noise survey and traffic count to the front of the appeal property was undertaken during the period 21:00 to 23:00 on a weekday evening. The Noise Assessment then used an estimate of likely numbers of delivery and customer vehicles to establish any increase in ambient noise levels from such traffic.
 8. On this basis, the Noise Assessment calculates that the increase in noise from delivery and customer vehicles would be less than 1 decibel (dB). Using IEMA guidelines⁵, the Noise Assessment equates this to the 'No Observed Effect Level' in the Noise Policy Statement for England and the Planning Practice Guidance (PPG) noise exposure hierarchy table. This appears to be a reasonable comparison, based on the method used in the Noise Assessment, as a less than 1dB change in noise level is very small and would not be noticed.
 9. Furthermore, the character of the noise from delivery and customer vehicles would be very similar to the existing noise climate that nearby residents will already experience, including during the evening and night-time periods. This is based on my weekday mid-morning site visit observations of traffic on High Street and the Noise Assessment information. At my site visit I saw a fairly constant flow of traffic comprising a range of vehicle types including cars, buses and HGVs on High Street in proximity to the appeal property. The information presented in the Noise Assessment identifies the traffic passing the appeal property during the last one-hour night-time opening period proposed as predominantly cars, but also with occasional buses, vans and HGVs.
 10. The Council maintains its concerns about the noise and disturbance that may emanate from the general comings and goings and congregation of customers or delivery drivers at or near to the appeal property. This has not been

⁴ BS 4142:2014 +A1:2019 Methods for rating and assessing industrial and commercial sound

⁵ Institute of Environmental Management & Assessment document: Guidelines for Environmental Noise Impact Assessment – V1.2 (November 2014)

specifically accounted for in the Noise Assessment. Noise that may be made by customers in the vicinity is a point noted in the PPG with regard to noise impacts from hot food takeaways. The Council's concerns are not unfounded given the area around the appeal property includes a relatively wide pavement and the presence of nearby dwellings, in particular the adjacent property at 75 High Street. While this property does not have any windows in its gable elevation, it does have what appears likely to be a bedroom window at first floor relatively close to the proposed entrance.

11. Amended opening hours have been put forward which would see the premises closing at 22:00 each evening. Consequently, it would be likely to generate some activity from customers and / or delivery drivers at a time when most people are likely to be at home and would have a reasonable expectation of quieter conditions.
12. However, the character of the surrounding land use has an established evening economy. This includes the Charcoal Grill Takeaway and local convenience store within the same terrace as the appeal property. The submitted evidence identifies the Charcoal Grill as closing at 23:00 Monday to Thursday and 23:45 Friday to Sunday and the convenience store at 23:00 Monday to Saturday and 21:00 on Sunday. There is also the Dong Fang Gardens and Pizza Pizza (open past 24:00 on all days) takeaways almost opposite the appeal property and the nearby Queens Hotel pub (open to 24:00 Mondays to Thursdays and Sundays and 01:00 Fridays and Saturdays)⁶.
13. These uses would generate late evening noise from customers similar to those that might be expected from the proposal. Sounds associated with town centre activities as well as passing traffic would therefore be a normal experience for many nearby residents. Given the existing uses within the area, the additional evening noise and disturbance that would result from the proposal would not cause significantly greater harm than the present levels.
14. I acknowledge the appellant's point that there would be a low odour risk with the oven baking of pizzas, which is what is proposed. However, this is a matter which could change over time. The appellant's Odour Assessment concludes that there would be a high risk of nuisance to nearby receptors due to cooking odour. Consequently, the Odour Assessment identifies an odour control requirement of an electrostatic precipitator followed by carbon filtration rated at 0.2-0.4 seconds dwell time. The updated proposed ventilation system confirms that the proposed odour control specifications would comply with these requirements. On this basis, there is no substantive evidence to suggest that the system proposed would not be effective in managing odours in respect of the nearby residential properties.
15. Although the Council's environmental health officer initially raised concerns about odour, its appeal statement indicates that odour issues could be addressed by a condition requiring the extraction system to be installed in accordance with the appellant's odour control specifications. While the proposed use does have the potential to cause odour issues given its proximity to residential properties, a planning condition could ensure that a satisfactory system would be installed and maintained.

⁶ Opening hours taken from the Noise Assessment

16. I therefore conclude that the proposed development would not significantly harm the living conditions of nearby residents with regard to noise and disturbance and odour. Accordingly, it would not conflict with the residential amenity objectives of Policy SP22 of the Rotherham Local Plan Sites and Policies, adopted 2018, (the SP) and paragraph 130 of the National Planning Policy Framework (the Framework), or the pollution control requirements of Policy SP52 of the SP.

Other Matters

17. I note the concern about a concentration of hot food takeaways in the town. Policy SP22 of the SP seeks to address the proliferation of hot food takeaways to help maintain the economic vitality and viability of centres. It does this through setting restrictions on the number of such uses occupying ground floor units within a defined town or district centre and the number of hot food takeaways that can be located adjacent to each other. However, based on the evidence before me, the proposal would not exceed the restrictions in Policy SP22. While health effects can be a consideration for hot food takeaways, the Council's evidence confirms that its 2020 Equal and Healthy Communities Supplementary Planning Document would not apply in this instance given that the relevant restrictions in Policy SP22 are met.
18. There is no clear evidence before me to suggest that the proposed development would increase anti-social behaviour in the area or the occurrence of litter, or that it would have unacceptable effects on parking provision or highway safety.

Conditions

19. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
20. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans. A number of conditions are necessary to avoid unacceptable impact on the living conditions of nearby residents. This includes conditions to require that an appropriate odour control system is installed, operated and maintained; that only the plant specified in the Noise Assessment or equivalent is installed and operated; that such plant includes the vibration and noise control specifications identified in the Noise Assessment; and restrictions on the hours of operation.

Conclusion

21. For the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

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: location plan - 12903-AEW PJ004226-XX-DR-0005; block plan - 12903-AEW PJ004226-XX-DR-0006; proposed elevations - 12903-AEW PJ004226-XX-DR-0004; proposed GA plan - 12903-AEW PJ004226-00-DR-0003.
- 3) All cooking fumes shall be exhausted from the building via a suitable extraction and filtration system as detailed in the EMAQ Risk Assessment for Odour carried out by All Ventilation & Extraction Ltd dated 25th August 2022 and the proposed elevations plan dated 25th August 2022 (12903-AEW PJ004226-XX-DR-0004). This shall incorporate an electrostatic precipitator followed by activated carbon filtration rated at 0.2-0.4 seconds dwell time. The cooking odour extraction flue shall discharge at a point not less than one metre above the highest point of the roof of the building. The extraction/filtration system shall be operated and maintained in accordance with the manufacturer's specifications, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The system shall be retained and operated during cooking for so long as the use continues.
- 4) Only plant specified in section 3.3 (or plant of the equivalent sound power levels) of the Noise Assessment undertaken by Philips Acoustics Ltd dated August 2022 (ref:21161-002 Revision A) shall be installed and operated on site.
- 5) Plant installed on site shall comply with the vibration and noise reduction criteria as specified in sections 3.4 and 3.5 (and subsections of 3.5) of the Noise Assessment undertaken by Philips Acoustics Ltd dated August 2022 (ref:21161-002 Revision A).
- 6) The use hereby permitted shall only be open to customers or for deliveries between the hours of 11:00 to 22:00 Mondays to Sundays.