



Appeal Decision

Site visit made on 20 December 2022

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th March 2023

Appeal Ref: APP/W4515/W/22/3309280

3 Darras Drive, Moor Park, North Shields, NE29 8RW

- 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 Randeep Singh Sahajpal of Mr & Mrs Singh Sahajpal against the decision of North Tyneside Council.
 - The application Ref 22/01283/FUL, dated 4 July 2022, was refused by notice dated 26 August 2022.
 - The development proposed is retention of Use Class E across existing ground floor commercial unit (specifically a proposed change of use from existing hair salon under Use Class E(c) to a restaurant/café under Use Class E(b) for sale of food and drink for consumption (mostly) on the premises with some ancillary takeaway) and installation of two extraction duct systems: one at the side and one at the rear of property, both exiting at ground floor ceiling level to both terminate above the existing eaves level of two storeys through ducting and high velocity, directionally-upwards cowl units.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the living conditions of neighbouring occupiers, with regard to noise and odour; and
 - the character and appearance of the area.

Reasons

Living Conditions

3. The appeal property is a commercial unit, occupying part of the ground floor of a 2-storey building fronting Darras Drive. Adjacent to the appeal site at the ground floor is a convenience store. The first floor of the building is in residential use. The small parade of commercial units is within a predominantly residential area which creates a sensitive relationship. Two extraction systems are proposed, associated with the proposed use of the appeal site as a restaurant/café with some ancillary takeaway.
4. A noise report has been submitted, undertaken by a suitably qualified professional, and in accordance with BS 4142 2014. The noise sources assessed were the external portions of the proposed extraction systems. The report concludes that noise from the extraction systems would have a low impact on the nearest receptors, these being the rear garden of 45

Woolsington Road and the flat above the appeal site. The report concludes that the likelihood of complaint due to noise emissions from the proposed equipment is low.

5. It is proposed that the development will be open into the night-time, until 02:00 on Friday and Saturday. However, residual sound levels were only measured between 20:14 and 20:49. While generally understood to be early evening or evening, it is not representative of the proposed opening times. It may be that some acoustic consultants are of the view that a measurement of background sound during the night-time period is not necessary. Nonetheless, without noise monitoring and calculation of background noise at night-time when the effects of the development would be most keenly experienced when neighbouring occupiers are likely to be at home and sleeping, I cannot be sure that the proposal would not give rise to significant adverse effects upon the health and quality of life of these occupiers.
6. While a restaurant/café is not generally renowned for being noisy, it is likely that the late-night activity at the site would be related to the proposed ancillary takeaway use, which has a greater potential for disturbance from increased comings and goings and has not been considered in the noise report.
7. It may well be possible to upgrade the insulation of the floor/ceiling between the appeal premises and the flat above. However, even if professionally installed modern extraction fans are designed to be as quiet and vibration free as possible, and the use of vibration mounts to mitigate, given the sensitive relationship between the appeal site and nearby dwellings, particularly the flat above the appeal site, I cannot be sure on the basis of the evidence before me, that the occupiers would not experience material harm to their living conditions in relation to noise.
8. Any odour generated from the proposed use is likely to be experienced by occupiers of the flat above the appeal site and those living closest to the site. Details of odour extraction have been provided and comprise an odour abatement system with a high level of control. One flue is proposed on the side elevation and one at the rear. Both are located adjacent to window openings of the first floor flat and would terminate below the ridge height.
9. It is suggested that the proposed modern extraction system has been designed in such a way that odours would be dispersed upwards effectively. Nevertheless, the flues would not be located above ridge height in accordance with best practice guidance and no allowances for a higher level of odour control have been proposed to mitigate for this. It has not been shown why this best practice guideline should only apply to older style extraction units, so I cannot be sure that there would not be some degree of fugitive odours.
10. The flues are located on two elevations, adjacent to window openings. Any fugitive odours would be experienced by the occupiers of the first floor flat in two rooms, resulting in a cumulative effect for these occupiers. The windows of the flat above the appeal site are in such proximity to the flues it is likely that there would be a detrimental effect on living conditions in relation to odour and it is appropriate to take a precautionary approach on this matter to protect the living conditions of the occupiers of the first floor flat. While it may be that the current occupiers of the flat have not objected to the appeal scheme and nearby residents are in support of the development proposed I am mindful that the harm I have identified would be permanent.

11. It is indicated that the change of use to restaurant/café could take place without permission and without any odour extraction, and this is a fallback position. However, there is no clear evidence that the desired use could actually take place without some form of flued extraction, or that it would actually be pursued. Consequently, I find the suggested fallback position to have limited weight in the determination of the appeal.
12. For the reasons set out above, the proposal would harm the living conditions of neighbouring occupiers, with regard to noise and odour, in conflict with policies DM6.1 and DM5.19 of the North Tyneside Local Plan (2017). These policies, amongst other things seek development that does not cause nuisance or unacceptable impacts to people, in relation to noise and smell, particularly in proximity to sensitive areas, such as housing.
13. The proposal is also contrary to the provisions of the National Planning Policy Framework (the Framework), including Paragraph 185 which seeks development that is appropriate for its location and mitigates and reduces potential adverse impacts resulting from noise.

Character and Appearance

14. The appeal site is located on the edge of a residential area, characterised by strong building lines. While the first floor is in residential use, the ground floor is recognisable as being in commercial use with a different appearance to the residential properties nearby, owing to signage on the front elevation. Moreover, the large area of hardstanding at the front and the absence of boundary treatments is distinctly different to the domestic front gardens and paved areas of nearby dwellings.
15. While I observed that the side elevation can be read as residential in character from some limited views, the appeal site does not form part of the strong building line of the adjacent residential streets. It is set back by a large grassed area and read as a separate building in commercial use. While the proposed flues are of a substantial size, they are not so large as to be industrial in nature, and in any event, a condition can be imposed requiring the flues to be painted to match the brick work to ensure a harmonious appearance.
16. As such, the proposal would not harm the character and appearance of the area and accords with Policy DM6.1 of the North Tyneside Local Plan (2017), which seeks development that is designed based on an understanding of the local area and responds to its context. It also accords with the provisions of the Framework in relation to achieving well-designed places set out in Section 12.

Other Matters

17. The appeal scheme would represent investment in the premises and the local community, contributing to an active street frontage. It would also support employment and servicing opportunities, including potential linked trips to the adjacent convenience shop. However, the precise extent of benefit has not been clearly articulated on these matters and, therefore, I give them limited weight.
18. The appellant has expressed frustrations with the Council's handling of the case, this has not affected my consideration of the planning merits of the scheme.

Conclusion

19. While the appeal scheme would not be harmful to the character and appearance of the area, my above findings on the effect of the proposal on the living conditions of neighbouring occupiers, with regard to noise and odour, bring the development into conflict with the development plan, read as a whole. There are no material considerations that have been shown to have sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

F Harrison

INSPECTOR