



Appeal Decision

Site visit made on 27 June 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2023

Appeal Ref: APP/Z3635/W/22/3311716

192 Feltham Hill Road, Ashford, Surrey TW15 1LJ

- 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 Alex Hooper of AJs Coffee House against the decision of Spelthorne Borough Council.
 - The application Ref 22/00666/FUL, dated 5 May 2022, was refused by notice dated 1 July 2022.
 - The development proposed is planning application for the erection of a wooden canopy to the front of the coffee shop to allow for sheltered seating and planning application for the installation of new extraction fan unit.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Alex Hooper of AJs Coffee House against Spelthorne Borough Council. This application will be the subject of a separate decision.

Preliminary Matters

3. An extraction fan unit has been constructed at the appeal site. However, the appeal before me relates to a proposal for a larger extraction fan unit. The plans submitted by the appellant with the appeal only showed the extraction fan unit as installed. The plans which the Council determined the application on were then submitted and I have accepted them as replacement plans for the appeal. Both parties confirmed that the larger extraction system, as shown on the proposed front elevation and proposed side elevation are the correct plans. Therefore, I have determined the appeal on the basis of the proposed development, as shown on the plans, and the description of development which is set out in the application form.
4. Since the Council made its decision the Spelthorne Draft Local Plan and the Draft Staines Development Framework have both been submitted to the Planning Inspectorate for Examination. However, the Council has advised that, on 6 June 2023, it resolved to formally request that the Planning Inspectorate pause the Examination Hearings for a period of three months. As such I cannot be certain when the plan is likely to be adopted, if any policies are to be modified, or if there are any unresolved objections. I am therefore not able to give any weight to either emerging policy documents in the consideration of this appeal. Therefore, I have determined the appeal in accordance with the current development plan.

5. From the evidence before me there is no dispute between the main parties as to the acceptability of the wooden canopy to the front of the building. I shall therefore confine my detailed considerations to the proposed extraction fan unit.

Main Issue

6. The main issue is the effect of the proposed extraction fan unit on the character and appearance of the area.

Reasons

7. The appeal property, which is in use as a café/ restaurant, is a single storey building with a pitched roof and white painted brickwork. The building is set back from Feltham Hill Road with a gravel parking area between the building and the road. Around the appeal property is predominately residential though there are other businesses and a local shopping parade in the wider area. The properties either side of the site are residential with a pair of semi-detached houses to one side and a block of four flats in a two-storey building to the opposite side.
8. The evidence before me shows that the appellant applied retrospectively for planning permission for the existing flue¹. That application was refused on the grounds of the effect on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and odour.
9. The appeal before me proposes to increase the height of the system by installing an additional silencer to resolve the noise and odour issues. Although I acknowledge the concerns of the occupiers of the neighbouring properties, I have no substantive evidence to show that the proposed increase in height would not mitigate the noise and odour issues.
10. However, the height of the proposed extraction fan unit significantly projects above the height of the fence to the side of the building, and on the boundary with the adjacent flats. The extraction fan unit would project to approximately the height of the ridge of the roof. As the roof is pitched, and slopes away from the extraction fan unit, the system would be visually prominent and an incongruous feature on the side of the building. The scheme would be harmful to the street scene both immediately outside the site and outside the neighbouring flats.
11. The proposed extraction system, which is substantially and materially different to the previous scheme considered by the Council, due to its height and massing, projecting above and out from the roof of the building, would not respect, or make a positive contribution to, the street scene and would be visually incongruous and prominent.
12. The extraction fan unit would have a backdrop of the sky, when viewed from the street directly outside the site. When viewed from the neighbouring flats, and the street outside the flats, the backdrop would be the roof of the building. As such, even if the painting of the smooth metal finish was possible, which I have no substantive evidence that it would be, the extraction fan unit could not be painted in a colour that would reduce the visual appearance of the unit from

¹ Council reference 21/0978/FUL

both views. Painting the system would, therefore, not mitigate its effect on the character and appearance of the area.

13. The appellant asserts that the Council has since requested trellis fencing to screen the system. However, the addition of trellis is not before me to consider and the visual effect of trellis, of a scale tall enough to screen the system, would need to be considered under a new planning application, as advised by the Council. A condition to require the installation of trellis fencing would not meet the tests for conditions as set out in the Planning Practice Guidance. The installation of such would result in a significant change to the appeal proposal which interested parties would have no opportunity to comment on. Therefore, such a condition would not be reasonable.
14. For the above reasons I find that the proposal would have a harmful effect on the character and appearance of the area. It is, therefore, contrary to Policy EN1 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document, 2009 (CS) which, amongst other matters, seeks high standards of design which respect and make a positive contribution to the street scene and the character of the area, paying regard to scale, height and proportions.

Other Matters

15. That there may be other similar sized extraction systems on other restaurant businesses would not justify the scale and visual harm that would result from the proposal. I have not been provided with any detailed evidence of similar, or larger, extraction systems that are in similar street scenes, and that have a similar relationship with the host building.
16. The appellant contends that he has been attempting to liaise with the Council since the first refusal. However, from the evidence provided the appellant had discussed the proposal with the Council Environmental Health Team but did not seek formal pre-application advice from the Council Planning Department. Moreover, it is not for the Council Planning Officers to provide a solution. The Council provide advice on an applicant's proposal, based on what is submitted to them. It is for the applicant and professional advisors, outside of the Council, to find a solution.
17. Furthermore, the Council are not duty bound to negotiate during a live planning application. The Council are entitled to determine the application which was submitted to them. The evidence before me clearly sets out why the Council did not negotiate improvements to the scheme during their consideration of the application.
18. I acknowledge that the appellant's business is currently closed and that this has affected their welfare and income. However, except for the closure for Covid-19, which was a national Government requirement, I do not have sufficient evidence that any other closure was requested by the Council. Furthermore, although I am sympathetic of the appellant's concerns regarding these matters, they are not material to my decision on the main issue.

Conclusion

19. For the reasons given above I have found that the proposal would be contrary to the development plan, when taken as a whole. There are no other material

considerations that would indicate that the proposal should be determined other than in accordance with the development plan. The appeal is dismissed.

K Townsend

INSPECTOR