

Appeal Decision

Site visit made on 18 September 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th September 2023

Appeal Ref: APP/H1705/W/23/3315843

Unit 2, Greenlands Road, Basingstoke RG24 9RD

- 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 Basingstoke Fishy Delishy Ltd against the decision of Basingstoke and Deane Borough Council.
 - The application Ref 21/01473/FUL, dated 28 April 2021, was refused by notice dated 12 August 2022.
 - The development proposed is change of use of ground floor unit to a mixed use Class A1/A3/A5 to allow hot food takeaway, installation of duct to west and south elevations and internal alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner above is taken from the Council's decision notice. It was agreed by the appellant's former agent and reflects the proposal considered by the Council prior to its decision, including duct route¹.
3. With the appeal the appellant submitted an amended plan² and a revised noise impact assessment³. These set out a substantially different scheme for a duct. The Council has publicised the appeal but interested parties may be unaware of these amendments, which would be unfair. Procedurally this could be addressed by re-consultation but would not alter this fundamental change to what would be a different application compared to what was originally applied for in this regard. Accordingly, the amendments cannot be considered as part of the appeal⁴ and used to evolve a scheme at appeal stage⁵. I have, therefore, not taken the amended details into account in determining the appeal. A fresh planning application would need to be made to the Council in this respect.

Main Issues

4. The main issues in this appeal are:
 - the effect of the extraction duct on the character and appearance of the appeal building and the area; and
 - its effect on the living conditions of the existing occupiers of two flats directly above the appeal building, having regard to outlook and noise.

¹ Drawing no. FA-21-0057-00 Rev C

² Drawing no. FA-21-0057-00 Rev E

³ Venta Acoustics ref VA3370.230119.NIA, dated 24 January 2023

⁴ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

⁵ Planning Inspectorate Procedural Guide – Planning Appeals – England, June 2023

Reasons

Character and appearance

5. The appeal building, Unit 2, is a vacant ground floor commercial premises. There are two flats in two floors directly above it. This development is part of a large building in a shopping parade surrounded by new houses and flats built within the grounds of the former Park Prewett hospital. These buildings are simple in external form with an uncluttered contemporary design, clear horizontal or vertical emphasis and broadly uniform palette of external materials including narrow pipes or flues for services or drainage. This high degree of visually coherent built form is locally distinctive and as such makes a positive contribution to the character and appearance of the area.
6. The extraction duct is intended to remove fumes and odour generated by the proposed fish and chip shop. This metal tube would be 31.5cm in diameter with wider silencer sections and a splayed cowl, exiting the rear elevation of the appeal building at upper ground floor level mainly in a corner. However, the rest of the duct would take a long, sinuous route – sideways and upwards along an outside face of a first floor rear elevation, above and across a flat roof over a first floor, upwards along the outside face of a second floor side elevation then jut out to curve around the eave level edge of a large, main monopitch roof. The bulbous cowl would project further upwards by about 1m and breach this high level roof line.
7. No matter what colour the duct was painted (or even if left bare metal), it would, therefore, be an inherently bulky and unduly convoluted structure, nor be camouflaged against the varied red brick, cream render, timber cladding and grey roof backdrop of the building or the distant sky. It would be in stark contrast to the discrete linear external pipework and flues incorporated at the outset in the design of this building and others near it.
8. The duct would not be visible in main public views of the appeal building from the front elevation and a car park in the shopping parade on east side. However, and albeit on a rear and side elevation, set back next to a service yard, significant parts of it would be seen as an incongruous feature in a view from Park Prewett Road to the north and from Northbrook Crescent to the west. Additionally, from the semi-public car parks to the west and south serving surrounding flats or houses.
9. As a result, I find that most of the extraction duct would not be sympathetically sited or designed, so undermine the architectural integrity of the development that the appeal building is physically and visually an integral part of. Albeit in a small way, this piecemeal change would nonetheless have a notable adverse effect on the character and appearance of the area. Consequently, the proposal conflicts with Policy EM10 of the Basingstoke and Deane Local Plan July 2021 (the LP). This policy includes that development should positively contribute to sense of place and respect the local environment, including the appearance of streets and other public spaces having regard to layout, detail and appearance.

Living conditions

10. The upper ground floor and first floor sections of the extraction duct would be too far and low down from a balcony and inset rear balcony doors or windows to unduly restrict or intrude in views from the second floor flat. For the same

reasons the ground floor part of the duct would not have these effects on similar views from the first floor flat. However, the first floor parts of the duct would be very close to the first floor balcony and these doors or windows. As a result, whether sitting or standing, it would be unduly intrusive or overbearing in some views from this flat. Despite clear views in other directions, the duct would be so close that it would be hard to ignore. This would, therefore, significantly undermine the enjoyment of the first floor flat by its occupiers.

11. These two balconies and windows or doors are the most affected noise sensitive receptors in this appeal. Subject to the imposition of a condition(s) the appellant's noise impact assessment (NIA)⁶ demonstrates that plant and equipment to be installed at the appeal building, including the external extraction duct, would achieve a noise emission at least 5dB below measured background noise levels. This would comply with the numerical 'starting point' set out in the Council's relevant adopted guidance⁷.
12. However, the duct wraps around parts of the building near both flats and each balcony. The NIA does not clearly identify which (of the two) is the 'nearest balcony' said to achieve the required predicted L_{Aeq} 33dB cumulative noise level outside a window⁸. Furthermore, I have not been informed that the 'second floor balcony' referred to elsewhere in the NIA⁹ is, in fact, the nearest balcony.
13. The Council's environmental health officer did not object to the proposal, including the duct. Nevertheless, for planning purposes noise impact can occur at levels below statutory nuisance. In this case, parts of the duct would be in operation in close visual and physical proximity to the balconies during afternoons and evenings Monday to Saturday to 10pm, and Sunday and public holidays to 8pm. This includes times when occupiers of the flats would reasonably expect to enjoy more peaceful enjoyment of the balconies for normal domestic activity, such as sitting out, relaxing or entertaining. These are the only semi-private external living areas.
14. In the absence of certainty and because some predicted noise levels would anyway be on the 5dB margin, the proximity of the duct would be such that even if there was no actual adverse noise impact, there would be a tangible and disagreeable perception of it. This would undermine the quality of life or the health and well-being of the existing occupiers of both flats. This would not be conducive to normal expectations for satisfactory living conditions and appreciably undermine people's enjoyment of their properties.
15. Considering the above, I find that the duct would have a significant adverse impact on the living conditions of the first floor flat with regard to outlook. I am also not satisfied the appellant has demonstrated that the duct would not cause unacceptable harm to the living conditions of the occupiers of the flats with regard to noise. Consequently, the proposal conflicts with LP Policies EM10 and EM12. These policies seek to ensure that development functions well with a high quality of amenity for occupants of neighbouring property and does not result in pollution detrimental to quality of life or human health.

⁶ Venta Acoustics ref VA3370.220315.NIA, dated 15 March 2022

⁷ Noise assessments and reports for planning applications – Guidance note for developers and consultants

⁸ NIA Table 5.4

⁹ NIA Appendix B

Other Matters

Park Prewett Conservation Area (the CA)

16. The significance of the CA includes the architecture and social history of the pockets of surviving, now converted Edwardian buildings charting the emergence of psychiatric hospitals in the First World War. These buildings have been carefully retained within the surrounding modern infill development. I have not been informed that any are listed buildings with a setting that includes the appeal building. The small-scale nature of the proposal would have no significant actual or innate visual or spatial interrelationship with these older buildings. The proposal would, therefore, have a neutral effect on this part of the CA, and the CA overall, so preserve the character and appearance of the CA.

Other interested party comments

17. I have had due regard to some local resident comments in support of the proposal, including that it would add choice and variety for takeaway food and support the local economy. Also, to other objections made by local residents, including about odour, car parking, litter and noise from other nearby commercial premises.
18. However, the Council did not object to the proposed change of use to a hot food takeaway for fish and chips for any of these reasons. There is no objective evidence that the proposal would cause anti-social behaviour but the Council has powers to control statutory nuisance and criminal activity would be a matter for the Police. The premises would be subject to relevant health and safety legislation or environmental health licencing, including for rubbish collection and fire risk, with enforcement a matter for the relevant public authorities. Alleged breach of the contractual basis on which flats were sold or let to residents by the original developer or a landlord, including assurances about no hot food takeaways, would be a civil matter between the respective parties.

Planning Balance and Conclusion

19. The proposal does not accord with the development plan taken as a whole. There are no other material considerations which override this finding. Consequently, for the reasons given above, the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR