



Appeal Decision

Site visit made on 29 June 2023

by **P Storey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Appeal Ref: APP/A5840/W/22/3313922

244 Southwark Park Road, Southwark, London SE16 3RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr Yaqoob Khan against the decision of the Council of the London Borough of Southwark.
- The application Ref 22/AP/2471, dated 9 July 2022, sought approval of details pursuant to condition No 3 of a planning permission Ref 20/AP/2392 granted on 19 October 2020.
- The application was refused by notice dated 7 December 2022.
- The development proposed is described on the decision notice for planning permission Ref 20/AP/2392 as "*Change of use from A1 (Retail) to A1 (Retail) and A3 (Restaurant and Cafe), installation of new shopfront and; installation of extraction flue and x 2 air conditioning units to rear elevation.*"
- The details for which approval is sought is Condition 3, which is set out as follows:
Commercial Kitchen Extract Ventilation
Prior to the commencement of use, full particulars and details of a scheme for the extraction and ventilation of the commercial kitchen shall be submitted to and approved by the Local Planning Authority. The scheme shall include:
 - *Details of extraction rate and efflux velocity of extracted air*
 - *Full details of grease, particle and odour abatement plant*
 - *The location and orientation of the extraction ductwork and discharge terminal*
 - *A management servicing plan for maintenance of the extraction system to ensure that fumes and odours from the kitchen do not affect public health or residential amenity. Once approved the scheme shall be implemented in full and permanently maintained thereafter.*
- The reason given for the condition is:
In order to ensure that any installed ventilation, ducting and ancillary equipment in the interests of amenity will not cause amenity impacts such as odour, fume or noise nuisance and will not detract from the appearance of the building in accordance with The National Planning Policy Framework 2019, Strategic Policy 13 - High Environmental Standards of The Core Strategy 2011 and Saved Policy 3.2 Protection of Amenity of The Southwark Plan 2007.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both the National Planning Policy Framework (the Framework) and the development plan for the area have changed since the conditional parent planning permission to which this appeal relates was granted. Accordingly, the policies listed against the condition in the original decision notice for planning permission Ref 20/AP/2392 no longer form part of the development plan. I have therefore determined the appeal in accordance with the adopted policies

referenced in the decision notice for application Ref 22/AP/2471, and also the Framework, insofar as they relate to the matters covered by the condition.

3. There is a slight typographical error in the wording of the 4th requirement of condition No 3, as set out in the banner heading. The Council has confirmed that the words "to do" should be replaced with the words "do not". However, this does not undermine the intention of that part of the condition when read alongside the reason given by the Council for its imposition.

Main Issue

4. The main issue is whether or not the details submitted in relation to condition No 3 would provide acceptable extraction and ventilation measures, with particular regard to safeguarding the living conditions of the occupants of neighbouring residential units.

Reasons

5. The mid-terraced property to which this appeal relates is located at ground floor level within an area predominantly comprising ground floor commercial uses. However, there are first floor residential units directly above it and to either side, which do not form part of the appeal site.
6. Collectively, Policies P56 and P65 of The Southwark Plan 2019-2036 – For adoption – February 2022 (the SP), and Policy SI1 of the London Plan – March 2021 (the LP) seek, among other objectives, to avoid unacceptable loss of amenity to present or future occupiers or users, and to address the impacts of poor air quality on building occupiers and public realm users. Policy P66 of the SP seeks to reduce noise pollution. Furthermore, paragraph 130 of the Framework states that decisions should ensure that developments promote, among other things, a high standard of amenity.
7. Within this policy context I am satisfied that condition No 3 necessarily seeks to secure specific details of a scheme of extraction and ventilation for a commercial kitchen for the previously permitted restaurant and café.
8. Consistent with the requirements of condition No 3, the submitted details include plans and elevations which illustrate that the ducting for the proposed extraction system would run rearwards from the ground floor commercial kitchen. It would exit the building's rear elevation at ground floor level where an external flue would extend upwards, along the external wall of the first-floor residential unit directly above, to its discharge point above the building's eaves level. Two external air conditioning units would also be installed to the ground floor rear elevation, one to each side of the flue.
9. The Council has not raised any concerns regarding the effect of the proposed installation on the appearance of the building and, from the submitted evidence and my site inspection, there is no cause for me to dispute that stance. Nevertheless, the Council's Environmental Protection Team are not satisfied that the details provided are acceptable.
10. I am satisfied that the appellant has provided sufficient detail of the proposed location and orientation of the extraction ductwork and discharge terminal to address the third criterion of the condition.

11. The letter from KP Acoustics evidences that, in terms of noise, the activities associated with the use would not represent an adverse impact to the residents above the commercial unit. However, crucially, bearing in mind the proximity between the proposed equipment and windows serving the neighbouring residential use, I do not find the required details of the specific extraction rate and efflux velocity of extracted air, or the details of grease, particle and odour abatement plant, to be adequately evidenced for this particular site context within the submitted evidence.
12. Additionally, the generic maintenance instructions contained in the submitted User Manual do not provide a level of detail to comprise a sufficiently robust and enforceable management servicing plan for this particular site to satisfy condition No 3.
13. Accordingly, the submitted details do not adequately demonstrate acceptable ventilation and extraction attenuation measures in accordance with the specific requirements of condition No 3. In the absence of the necessary details, the submission fails to accord with the requirements of Policies P56 and P65 of the SP, Policy SI1 of the LP, and the provisions of the Framework with regard to safeguarding the living conditions of the occupants of neighbouring residential units.

Conclusion

14. For the reasons given above I conclude that the appeal should be dismissed.

P Storey

INSPECTOR