



Appeal Decision

Site visit made on 31 January 2024

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/T2350/W/23/3326156

35-39 (Flat 6) Whalley Road, Clitheroe, Lancashire BB7 1EE

- 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 Iblaal Khan against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2022/0771, dated 7 November 2022, was refused by notice dated 9 June 2023.
 - The development proposed is described as 'Change of Use From a 2-Bedroom Flat (C3) into a Hot Food Takeaway & Restaurant with New Shop Front and a Mechanical Extractor Flue to the Rear'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.

Main Issues

3. The main issues are the effect of the proposed development upon (a) the living conditions of occupiers of nearby residential properties, with particular regard to noise and disturbance, and (b) the character and appearance of the building and the area.

Reasons

Living conditions

4. The appeal site comprises the ground floor of a mid-terraced property on a main route approaching Clitheroe town centre. The surrounding area contains a mix of uses. Residential flats/houses are located above and adjacent to the appeal site, as well as to the rear and further along Whalley Road. A variety of commercial uses occupy ground floor units, including restaurants and hot food takeaways (HFT's). There is a taxi firm to the rear of the appeal site and the Royal British Legion occupies the same terrace. Parking is restricted along the site frontage.
5. The proposed development would include a seating area for up to 28 diners. Opening hours are proposed from midday to 2am each day. Whilst I note some reference by the main parties to alternative opening hours, no confirmation of any change to that proposed on the application form, is before me. An

- extraction system is included, terminating above eaves height from a two-storey rear projection.
6. The appeal scheme has the potential to generate noise and disturbance in a number of ways, including from equipment/plant, from raised voices or music internally, and in terms of clients or collection/delivery drivers arriving and departing. Given the limited availability of parking to the front of the appeal site, there would be the potential for associated vehicles to park to the front of houses further along Whalley Road. This would inevitably result in further noise and disturbance to residents from car engines and radios, car doors closing, conversations or shouting, at a time in the evening and early morning when residents could reasonably expect quieter conditions.
 7. Whilst I appreciate that existing commercial uses, including HFT's, are likely to generate activity in the area, there is no evidence before me to suggest that these existing premises operate to a similar time in the early morning as that proposed for the appeal scheme.
 8. The plans indicate that at its terminus, the proposed extractor system would be fitted with a silencer to reduce noise, whilst the submitted Noise Report (NR) also references the use of anti-vibration brackets and airflow velocity limits to further reduce sound levels. The submissions confirm that at a distance of 3m, the sound level would be 30 dB (A). However, it is not clear from the plans before me that the flue terminal would be positioned 3m from all windows. As such, I cannot be certain that a sound level of 30 dB (A) would be the noise level experienced by occupiers of all nearby residential properties.
 9. In any event, the NR considers noise from the extraction system only. It does not consider the potential for internal noise transmission associated with equipment/plant, raised voices or music. Nor does it consider any noise and disturbance associated with the comings and goings of patrons, or how this relates to the existing noise environment for sensitive residential receptors, particularly so late into the evening and early morning. I do not agree with the appellant that these matters could only be considered following occupation. As such, I am unable to conclude that the appeal scheme would operate, whilst maintaining satisfactory living conditions for occupiers of adjoining dwellings. Given the uncertainty, this is not a matter that could be addressed through the imposition of a condition.
 10. My attention has been drawn to the use operating at 64 Whalley Road. The appellant suggests that the Council did not seek the same level of supporting information for that development. I have not been provided with the decision itself or the details of the case and so the full circumstances are not before me. However, this would not address the concerns I have set out above.
 11. To conclude on this first main issue, the proposal would harm the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance. It would conflict with Policy DMG1 of the Core Strategy 2008 – 2028 A Local Plan for Ribble Valley (Adopted 2014), (CS), insofar as it requires that new development does not adversely affect the amenities of the surrounding area. Consequently, there would also be conflict with CS Policy DMB1, as it requires assessment of new development with regard to the provisions of Policy DMG1.

12. The proposal would also conflict with paragraphs 135 and 191 of the Framework, which require new developments to function well and add to the overall quality of an area, provide a high standard of amenity for existing users, and ensure that new development is appropriate for its location, taking into account the likely effects of pollution on health and living conditions.

Character and Appearance

13. The proposed ducting of the extraction system would extend horizontally and then vertically at the rear of the building in a somewhat lengthy and convoluted arrangement. However, much of the horizontal section would sit just above the flat roof that extends to the rear of the appeal site, and so it would not appear overly prominent. The ducting would mostly be seen with the backdrop of the building. Fixed plant is not uncommon on the rear elevation of this terrace, including ducting of a similar design and materials as that proposed, on the adjoining building. Therefore, the ducting as proposed would not be an incongruous feature in this setting.
14. As such, the proposal would not result in harm to the character and appearance of the building or the area. The proposal complies with CS Policy DMG1 insofar as it requires new development to consider visual appearance and the relationship to the surroundings. The requirements of the Framework would also be met in terms of ensuring that development is sympathetic to local character, including the surrounding built environment.

Other Matters

15. The appeal scheme would be in an accessible location with ground floor access. I note that the Highway Authority has raised no objection to the proposal. An additional commercial premises would add a further service for the local community and make a positive contribution to the vitality and viability of the area, albeit this would be tempered by the nature of the restaurant/HFT, which would be closed for a portion of the day. These benefits carry modest weight, insufficient to outweigh the harm that I have identified in relation to the first main issue.
16. The appellant raises concerns with advice provided by the Council at pre-application stage and their subsequent processing of the planning application. These are not matters for this decision.

Conclusion

17. Whilst the proposed development would not result in harm to the character and appearance of the building or the area, this lack of harm is a neutral matter, which cannot outweigh the unacceptable harm the development would have on the living conditions of occupiers of neighbouring properties, with regard to noise and disturbance. The appeal scheme would not represent a sustainable form of development. It would conflict with the development plan, and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

S Brook

INSPECTOR