



Appeal Decision

Site visit made on 4 March 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/D1590/W/23/3325826

Moss Bros, 84 High Street, Southend-on-Sea SS1 1JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Adam Robinson of T Bello Group Limited against the decision of Southend-on-Sea City Council.
 - The application Ref 22/02337/AD, dated 6 December 2022, sought approval of details pursuant to condition No 4 of planning permission Ref 22/00828/FUL, granted on 23 June 2022.
 - The application was refused by notice dated 31 January 2023.
 - The development proposed is the change of use from a vacant, former retail shop (class E) at ground floor level to mixed restaurant and hot food takeaway use (sui generis), install plant and extraction system, and alterations to shopfront incorporating security shutter to front.
 - The details for which approval is sought are a post completion noise survey report dated 5th December 2022 prepared by Acoustic Consultancy Partnership Limited.
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Decision

1. The appeal is dismissed and approval of the details pursuant to condition No 4 attached to planning permission Ref 22/00828/FUL is refused.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.
3. The appeal relates to the Council's refusal to approve details required by a condition imposed on a planning permission. I can only deal with the appeal based on whether the information submitted meets the requirements of this condition. I cannot consider whether the condition meets the six tests set out in paragraph 56 of the Framework.

Background and Main Issue

4. Planning permission was granted in June 2022¹ for the change of use of the building from a vacant retail shop to a mixed restaurant and hot food takeaway use.

¹ Application ref 22/00828/FUL, the 'original application/permission'.

5. Condition 4 of the original permission includes the following requirement:
'Additionally, prior to first operation of the development hereby approved, a post completion noise survey must be undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning Authority. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set in the post-completion testing report. If the mitigation measures tested in the post-completion report prove to be insufficient, details of additional noise mitigation measures (where necessary to ensure the appropriate noise levels can be met), shall be submitted to and approved in writing by the Local Planning Authority and installed and tested thereafter at the site prior to operation of the flue extraction system.'
6. The condition was imposed 'to ensure the resulting noise from the flue extraction system would not be detrimental to living conditions of neighbouring and future occupiers in accordance with the National Planning Policy Framework (2021), Policies KP2 and CP4 of the Core Strategy (2007) and Policies DM1 and DM3 of the Development Management Document (2015)'.
7. The appellant sought approval of the post completion noise survey report required by condition 4. This was refused by the Council.
8. Therefore, the main issue is whether the post completion noise survey report meets the requirements of condition 4.

Reasons

9. The appeal site lies on the corner of High Street and Tylers Avenue, with Pitmans Close to the rear, in a busy central Southend location. It comprises a mixed restaurant and hot food takeaway, part of which has flats above. Extraction and air handling units have been placed on top of the single storey part of the building to the rear and there is also a side extract outlet. The Pipe of Port public house lies adjacent, with an entrance from Tylers Avenue.
10. The Acoustic Consultancy Report (ACR) for the original application indicates the nearest noise sensitive properties to the proposed plant locations are the first-floor level flat roof in Pitmans Close at the junction with Tylers Avenue (RPA) and the first floor level on the north side of Tylers Avenue (RPB). The ACR outlines that the cumulative plant noise criteria to be achieved at the façade of these receptor positions should not exceed $54\text{dBL}_{\text{Aeq,T}(15\text{min})}$ for RPA and $42\text{dBL}_{\text{Aeq,T}(15\text{min})}$ for RPB, based on widely accepted requirements of 10dBA below measured background noise levels for the operating periods of the plant.
11. The Post Completion Noise Survey Report (NSR) confirms installation of the extraction and plant units in accordance with the original permission and attenuation measures set out in the ACR. It provides noise values for discharge and intake fans. I observed that background noise levels on Pitmans Close are dominated by the existing discharge and intake cowls from the public house. Due to this, the NSR indicates that measurements near the receptors could not be carried out to validate the operating noise levels solely from the plant on the appeal property. Nevertheless, the NSR concludes that the installed plant and attenuation measures would achieve the target plant noise level of 10dBA below the lowest background noise level during the day and night.

12. I acknowledge that the high noise levels from the public house plant and its hours of operation create difficulties in measuring noise solely from the plant on the appeal site. I also note that there is no evidence of residents' complaints about plant noise. Nevertheless, as the NSR does not include actual measured noise levels, the requirement in condition 4 of the original permission to carry out a post completion noise survey has not been met.
13. It is stated that the site plant is not audible at the nearest noise sensitive properties due to noise from the public house plant. However, the absence of a noise survey means that it is not possible to adequately assess the performance of the noise mitigation measures against the noise levels or whether any further mitigation measures would be required.
14. The appellant considers that turning off the existing public house plant to carry out noise measurements would create an artificial noise environment. However, although this equipment is lawful, there is no certainty that it would be retained in perpetuity. Thus, the presence of this existing noise source does not negate the need for the mitigation of noise arising from the proposed scheme.
15. Policies KP2 and CP4 of the Southend-on-Sea Core Strategy 2007 (CS) and Policies DM1 and DM3 of the Council's Development Management Document 2015 (DMD) require development to avoid detrimental impacts on the living conditions of neighbouring residents, having regard to noise, amongst other things. As it has not been demonstrated that the noise from the extraction system and air handling units is not detrimental to the living conditions of neighbouring and future occupiers, I find conflict with policies in the CS and DMD.
16. Consequently, I conclude that the post completion noise survey report fails to meet the requirements of condition 4.

Conclusion

17. For the reasons given above, the appeal should be dismissed.

A Wright

INSPECTOR