



Appeal Decision

Site visit made on 6 June 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th June 2024

Appeal Ref: APP/Z4718/W/23/3331712

3 White Horse Gardens, Birstall, Batley WF17 0NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ryan Blake of Blake Catering Limited against the decision of Kirklees Council.
 - The application Ref is 2023/62/91769/E.
 - The development proposed is a change of use from garage into catering preparation kitchen.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form development description includes justification for the proposal, so for clarity I have used that as on the decision notice. The application form also refers to an option to change the garage into a bedroom. As this is not shown on the plans nor referenced in the appellant's statement or the Council's officer report, I have not taken this into consideration as part of my determination.
3. Works/change of use are identified as having commenced in March 2023, and my site visit identified the majority of the garage to be in catering use. The garage also contains an additional internal wall not shown on the floor plan.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, with respect to noise and odour.

Reasons

5. The appeal site is a 2-storey end terrace dwelling, forming a mirror image of the conjoined dwelling. The conjoined side incorporates an integral garage with living space above. The dwelling lies within a corner plot in a cul-de-sac, and includes a rear garden, and one parking space in front of the garage.
6. The proposal would not involve any external alterations, but would change the garage into a commercial preparation kitchen to support the appellant's catering business. Food would be prepared and cooked, then taken to events to re-heat. The appellant identifies only limited kitchen use, likely to be for some of the period between 1000 to 1700 hours on Wednesdays to Sundays, and with very minimal noise and odour. They are a sole trader, and the proposal would not involve any additional staff, traffic, or customer visits.

7. However, the nature of a catering business is such that there is the potential for the neighbouring occupiers to be impacted by noise and cooking odours above that to be expected from a domestic use. In this instance, this is particularly due to the proximity, and the shared garage wall. Although the neighbours currently only use their garage for storage with habitable rooms away from the party wall, this may change in future. There is also living accommodation above their garage. As such, their current support does not indicate that there may be no future objections, from themselves or from any other future occupiers.
8. Furthermore, the proposed limited use is based on the appellant's current business operation, whereas granting permission would allow the use in perpetuity. As such, the business may grow, or a future occupant could have a different operational model or cuisine, resulting in a more intensive use.
9. Mitigation for such future scenarios must therefore be incorporated within the proposal. Any conditions which I could impose to try to achieve this mitigation, must meet the required tests for conditions in paragraph 56 of the National Planning Policy Framework ('the Framework') (2023) and the Planning Practice Guidance. However, I have not identified any such acceptable conditions.
10. For instance, without technical details of the extent of existing sound insulation and existing noise generation as baseline evidence, a condition could not monitor or control future noise levels, or specify any additional required sound proofing. It would not be reasonable or enforceable to specify which cooking appliances may be used.
11. Moreover, no specific details have been provided relating to the ventilation system, other than it could connect into the existing utility room ventilation installed when the dwelling was built. My site visit did identify what appears to be this original ventilation in the rear elevation, as it matches that on the conjoined dwelling. However, I saw no evidence of a connection into the middle portion of the garage adjacent to the cooking equipment.
12. While the appellant highlights differences between the environmental health advice given to them prior to the application, and the formal consultation response, both identified that an additional ventilation extraction system would be required. The Council identifies that current guidance requires a discharge to terminate 1.0m above ridge level. This would require the consideration of its visual impact as well as impact upon neighbours.
13. In totality, it would therefore be unreasonable to delay submission of noise and ventilation information until the conditions stage, as the permission would be unimplementable if acceptable mitigation could not be achieved.
14. I have sympathy that dismissing this appeal may affect the appellant's business and its economic benefits, but this does not outweigh the potential harm I have identified.
15. Overall therefore, I find that the proposal has the potential cause harm to the living conditions of neighbouring occupiers. It would conflict with Policies LP24, LP51, and LP52 of the Kirklees Local Plan Strategy and Policies (2019), which together and amongst other matters require development to provide a high standard of amenity for future and neighbouring occupiers, and that any potential to increase noise and odour must be accompanied by evidence to

show that the impacts have been evaluated and mitigation measures incorporated. It would also conflict with the Framework paragraphs 135, 180, and 191, whereby new development should create a high standard of amenity for existing and future users, and mitigate existing development from being adversely affected by unacceptable levels of noise.

Other Matters

16. I note the appellant's criticisms of the Council's approach to their application, including not giving a chance to respond to issues raised, however, I have made my determination on the planning matters before me.

Conclusion

17. The proposal conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR