



Appeal Decision

Site visit made on 18 June 2024

by A Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/W4515/W/24/3342088

3 Darras Drive, Moor Park, North Shields, North Tyneside NE29 8RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Randeep Singh Sahajpal (Mr & Mrs Singh Sahajpal) against the decision of North Tyneside Council.
 - The application Ref 24/00144/COND sought approval of details pursuant to condition 4 of planning permission Ref 23/00766/FUL, granted on 7 August 2023.
 - The application was refused by notice dated 28 March 2024.
 - The development is "Retention of Use Class E across existing ground floor commercial unit (specifically a proposed change of use from existing hair salon under Use Class E(c) to a restaurant/café under Use Class E(b) for sale of food and drink for consumption (mostly) on the premises with some ancillary takeaway) and installation of two extraction duct systems: one at the side and one at the rear of property, both exiting to be external at ground floor ceiling level to both terminate above the existing eaves level of two storeys through ducting and high velocity, directionally-upwards cowl units. Revised scheme with higher flue termination points at ridge level and additional noise survey work - resubmission of 22/01283/FUL"
 - The details for which approval is sought are the details of the extraction ducting, as set out in condition No 4 which states that: *Notwithstanding condition 1, prior to the extract ducts being installed revised plans to show the ducts terminating above ridge level and details of an appropriate means of enclosure/screening and colour treatment shall be submitted to and approved in writing by the Local Planning Authority. The development shall therefore be carried out in accordance with the approved details.*
 - The reason given for the condition is:
To ensure adequate dispersal of cooking odours in the interests of residential amenity and to protect the visual amenity of the area; having regard to policies DM6.1 and DM5.19 of the North Tyneside Local Plan (2017) and National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the submitted details meet the requirements of condition No 4.

Reasons

3. In determining this appeal, I am only able to consider whether the requirements of condition No 4 have been met. I am not able to reconsider the planning permission or discuss the merits of the condition.

4. The first part of condition No 4 specifically requires "*revised plans to show the ducts terminating above ridge level*". As the submitted plans show one of the ducts terminating below ridge level, the submitted details conflict with the requirements of the condition.
5. Procedurally, if I were to agree to a flexible approach in respect of the requirements set out in the condition, this would effectively vary the condition. Separate legislation and a separate application process exists for this.
6. In terms of the requirements for the enclosure/screening of the ducting, further details were supplied with the appeal showing the specification and colour of the proposed brick slips to be used. However, given my findings above, I have no option other than to dismiss the appeal.

A Caines

INSPECTOR