



Appeal Decisions

Site visit made on 25 June 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal A Ref: APP/D1265/W/23/3330429

93 Weston Road, Weston, Portland, Dorset DT5 2DA

- 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 Cengiz Zorel against the decision of Dorset Council.
 - The application Ref is P/FUL/2022/07960.
 - The development proposed is change of use from use class E(A3) restaurant/cafe to sui generis-takeaway use. Replacement of flue system at the rear, external alterations involving installation of upvc windows and door.
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Appeal B Ref: APP/D1265/H/23/3330427

93 Weston Road, Weston, Portland, Dorset DT5 2DA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
 - The appeal is made by Mr Cengiz Zorel against the decision of Dorset Council.
 - The application Ref is P/ADV/2022/07961.
 - The advertisement proposed is display of non-illuminated sign.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. I have used the site address from the Council's decision notices as it appears to more accurately reflect the address of the appeal property.
4. I have also taken the descriptions from the Council's decision notices as they more succinctly describe the proposals, but I have removed the words 'continue' and 'retain' as these are not acts of development.

Background and Main Issues

5. The appeal site consists of a commercial premises at ground floor with residential accommodation above. Formally a restaurant at ground floor level, I understand that the premises has been operating as a takeaway with some tables and chairs in the premises for patrons. The timber window frames to the front elevation have been replaced with UPVC frames. At the time the appeal was submitted, having regard to the documentation accompanying it, a metal

flue had been erected at the rear of the premises to extract cooking odours from the premises. Those details are shown on drawing number 4/6 – A3.

6. However, during my site visit I saw that the flue had been removed, dismantled and was located in the yard area at the rear of the premises. The 'chimney' shown in drawing number 6/6 – A3 was in situ.
7. The main issue with respect to Appeal A is the effect of the use of the premises as a takeaway on the living conditions of neighbouring occupiers with particular regard to odour, noise and disturbance and whether the UPVC windows and flue preserve or enhance the character or appearance of the Weston Conservation Area.
8. The main issue with respect to Appeal B is the effect of the proposed advertisement on amenity, including the Weston Conservation Area.

Appeal A Reasons

Noise and disturbance

9. The appeal property is located within a terrace of residential properties and there are no other commercial premises within close proximity of the site. The relationship between the appeal property and its neighbours is therefore very close. In addition, given the residential nature of the immediate area, residents living there have a reasonable expectation of peace and quiet in their own homes.
10. The opening hours of the premises are indicated on the planning application form as 0400 – 2200. However, taking into account other information provided in support of the application, I understand that this is a typographical error and should be 1600-2200 hours.
11. Noise and general disturbance generated from the comings and goings of customers to the hot food takeaway during these times would be likely to include noise from car engines left to idle whilst a takeaway is collected, car doors slamming, people talking and possibly congregating in groups on the footway outside, all of which would generate a level of noise and disturbance which would have an impact on the occupiers of the nearby properties.
12. I accept that the premises were previously used as a restaurant and that there would be some noise associated with the comings and goings of patrons. I also accept that the restaurant could have opened longer hours than proposed here although, in practice, this did not occur. Visitors to a restaurant tend to arrive and stay for a period of time so the frequency of people and cars arriving at and leaving the restaurant premises would be less. It is also unlikely that engines would be left idling for a period of time and no reason for groups to congregate outside the premises. I also understand from the representations submitted that the restaurant use operated for approximately 20 years and there seems little doubt from the submitted representations, that there has been a marked change in the level of disturbance experienced by local residents since the use of the premises as a takeaway commenced.
13. The kitchen extraction system at the premises has the potential to create unacceptable levels of mechanical noise and vibration. The appeal is

accompanied by a Noise Impact Assessment (NIA)¹ which relates to the noise emissions from the kitchen extraction system. It sets out that noise measurements have been carried out at the appeal property and that with the extraction equipment operating, the appeal proposal results in an adverse impact in respect of noise on the nearest residential receptor, which requires mitigation.

14. The NIA records that the ambient background noise measurement increased by 26dB from 40dB to 66dB when the extraction equipment was in use. However, from the details provided, including the photograph at figure 5.2 of the NIA, it is clear that the assessment was carried out in respect of the installation detailed on the 'existing' drawing ref: 4/6 – A3, rather than the 'proposed' system shown on drawing number ref: 6/6 – A3. I therefore cannot be certain that the proposed measures to mitigate the excess airborne noise emissions and the transfer of noise as vibration from the proposed installation detailed on drawing ref: 4/6 – A3, would successfully mitigate noise emissions from the proposed extraction equipment. Therefore, notwithstanding the conclusions of the NIA, I am not satisfied that I have sufficient information before me to conclude that the proposed extraction equipment will operate without excess noise emissions, nor that those impacts could be adequately mitigated.
15. Taking these issues together, I find that the appeal development results in an unacceptable level of noise and disturbance to neighbouring occupiers which cannot be adequately mitigated. The proposal therefore conflicts with Policy ENV16 of the West Dorset, Weymouth and Portland Local Plan 2015 (LP) which only permits proposals which generate a level of activity or noise that would not detract from the quiet enjoyment of residential properties.
16. My attention has been drawn to Policy Port/BE3 of the Portland Neighbourhood Plan, made June 2021 (NP). However, this relates to the creation of new employment premises, and given that the premises previously operated as a restaurant, I do not find that the policy is relevant to the proposal before me.

Odours

17. The risk of odour impact on nearby receptors has been assessed in the submitted odour assessment (OA). Using criteria relating to dispersion, proximity of receptors, size of kitchen and cooking type, the assessment confirms that a high level of odour control is needed. Odour control recommendations are set out in section 3.3 of the OA and include the stack discharging 1m above the roof eaves of the building housing the kitchen, fine filtration, carbon filtration, grease filters and a fan. The OA concludes that installation of this equipment and ductwork constitutes high level odour control.
18. However, there are some inaccuracies within the OA which cast doubt on whether the mitigation measures proposed will achieve the required level of odour control and therefore the weight I should give to it in my decision. Firstly, there is nothing before me to indicate that the OA has been carried out by a competent person. Moreover, the OA refers to the site being typical of an urban cityscape environment with noise from fixed plant at the adjoining Tesco Express. However, Weston cannot be described as a cityscape and there is no Tesco Express in the settlement. In addition, the OA details the proposed ventilation system at points 3 and 4 in section 3.1. This is then shown on the

¹ By DAA Group dated 23 March 2022

drawing at figure 2 on page 7. However, this details the extraction system shown on the 'existing' drawing numbers: 3/6 – A3 and 4/6 – A3, rather than the 'proposed' system shown on drawing numbers: 5/6 – A3 and 6/6 – A3. This calls into question whether the OA has been based on the proposed system and therefore whether the mitigation measures proposed would be effective.

19. I also cannot be certain that the 'chimney' shown on drawing number ref: 6/6 – A3 would comply with the requirement² set out in section 3.3 of the OA for extracted air to be discharged at not less than 1m above the roof eaves of the building housing the kitchen.
20. Therefore, from the evidence before me, I am not satisfied that it has been demonstrated that the odours resulting from the proposed use of the appeal building as a takeaway, can be adequately mitigated. As a result, I do not consider that otherwise unacceptable development could be made acceptable through the use of a planning condition in this instance. I therefore find that the proposal would result in an unacceptable level of odour which would have an adverse impact on the living conditions of existing residents. This would be contrary to Policy E16 of the LP which seeks to minimise the impact of development on the amenity of existing residents and mitigate adverse emissions to the appropriate standard.

Conservation Area

21. The appeal site lies within the Weston Conservation Area (CA). Predominantly a residential area, terraces of cottages or houses, are set back behind large expanses of open village green space. There is a variety of two and three storey properties of simple, vernacular form having plain fronts and mainly built of Portland stone with slate roofs. It is the sense of openness and the uniformity of the materials palette including the concentration of local material and vernacular design which contributes to the significance of the CA.
22. The appeal property is in a prominent location, set back from Weston Road behind a green open space. It is part of a terrace of five properties identified as Important Local Buildings in the CAA³. The CAA identifies that it is a short terrace of two and three storey cottages, mainly built of stone with a mix of tile and slate roofs and that the terrace retains much of its early original form and openings.
23. The appeal property itself is rendered with a tile roof and the CAA identifies it as a shop. Having lost much of its original character, the appeal property contributes little to the significance of the CA other than being within a short terrace of other properties displaying vernacular character and features.
24. I have been provided with photographs of the windows which were in the ground floor of the building. The appellant says that the windows were a post-war installation and therefore not original to the building. Whilst I have no details of the age of the windows, I agree that the decorative arches to the windows suggest that they are relatively modern. Notwithstanding this, the windows were timber framed with subdivision at the top which aligned with the subdivision over the existing door. The narrowness of the frames, subdivision and dark colouring all assisted with making the windows appear recessive in the terrace.

² EMAQ (2018) Control of Odour and Noise from Commercial Kitchen Exhaust Systems

³ Appraisal of the Conservation Areas of Portland as amended 2017

25. Those windows have now been replaced with the windows the subject of this appeal. The windows in situ are UPVC. The frames are chunky and lack any subdivision. The UPVC appears bright and shiny and the windows open by sliding horizontally. The result is that the windows appear large, expansive and prominent in the street scene. They diminish further the contribution that the building and the terrace makes to the character and appearance of the CA.
26. I saw at my site visit that there was a predominance of UPVC window frames in the CA and that there was wide variation in style, colour and type of opening. I also saw that the windows in the rest of the terrace were UPVC. Rather than justifying the appeal proposal, the presence of UPVC elsewhere in the CA adds to my concern about the incremental harm which arises from the installation of the windows.
27. The CAA recognises that the quality of the CA has been eroded, in part, by inappropriate and unsympathetic replacement of windows and doors with modern UPVC but that there is scope for enhancement to further improve the character of the settlement. The windows the subject of this appeal would not achieve this.
28. I have considered whether the proposed windows would impact on the character and appearance of the local green space including Gooseberry Field, to the western side of Weston Road. Whilst the windows would be visible from Gooseberry Field, this would be at a distance and would not impact on the character and appearance of the open space or how the open space is experienced. Accordingly, I find the impact on Gooseberry Field would therefore be a neutral one and no conflict with Policy Port/CR2 of the NP would arise.
29. With regards to the metal flue at the rear, this had been removed from the building at the time of my visit and does not form part of the proposals on drawing number ref: 6/6 – A3. I understand that the 'chimney' shown on the drawing has been in situ a number of years and therefore the proposal would have a neutral impact on the CA in this respect.
30. In line with Paragraph 205 of the National Planning Policy Framework (the Framework), when considering the impact of a proposed development on the designated heritage asset, great weight should be given to its conservation. Given that the proposal would be of a relatively small scale in the context of the CA as a whole, I find that the harm arising from the installation of the windows to be less than substantial in this instance. Under such circumstances, Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
31. The appellant has referred to the condition of the previous windows and the prevalence of UPVC windows in the vicinity, in support of their appeal. However, I do not consider that these amount to public benefits arising from the proposal. Therefore, there is no public benefit sufficient to outweigh the harm.

I conclude therefore that the proposed development would fail to preserve or enhance the character or appearance of the CA. This would be contrary to Policies ENV4 and ENV12 of the LP which seek to conserve and where appropriate enhance the significance of designated heritage assets and achieve high quality design which complements or actively improves legibility. The

appeal development is also contrary to Policies Port/EN4 and Port/EN7 of the NP which seek high quality design and locally appropriate materials and require that alterations to buildings identified as heritage assets are sensitively designed.

Appeal B Reasons

32. I have set out above, the characteristics of the CA. To prevent repetition, these are not repeated here.
33. This appeal relates to the display of a non-illuminated fascia sign. The fascia sign is located on a building in a terrace of, and surrounded by, residential properties. The lack of other commercial premises in the terrace or indeed close to the appeal site means that the sign is prominent in the street scene. The details I have been provided with indicate that there was a fascia sign at the premises when it was in use as a restaurant and that it was constructed of timber.
34. I saw on my site visit that the fascia sign which is now on the building was white plastic with dark lettering. However, the submitted details indicate that the sign would be a dark blue plastic with white lettering. Interested parties and the Council's Conservation Officer refer to additional text and images on the sign and the separate menu board to the right of the front elevation. However, these do not form part of the application before me. Whilst the final colour of the sign is unclear, there is no ambiguity in the submissions that the material of its construction would be plastic.
35. I saw that a plastic finish results in a sign which is shiny, has a modern appearance and appears as a visually intrusive feature in this prominent location within the CA. For these reasons, it detracts from the simple, vernacular character of the CA and therefore has a harmful effect on amenity.
36. In accordance with the Regulations, I have taken into account the provisions of the development plan so far as they are relevant. Policy Port/CR2 of the NP seeks to protect designated Local Green Spaces (LGS) from development which would have an adverse impact on them. Notwithstanding my findings above, the fascia sign would be seen at a distance from Gooseberry Field and it would not impact on the character and appearance of the open space or how the open space is experienced. Accordingly, I find the impact on Gooseberry Field as a LGS would therefore be a neutral one and no conflict with Policy Port/CR2 of the NP would arise.
37. Policies ENV4 and ENV14 of the LP seek proposals which conserve and where appropriate enhance the significance of a heritage asset and are of high quality design which are compatible with, and respect the buildings surroundings. I have concluded that the advertisement would harm amenity, and therefore the appeal proposal conflicts with these policies. The appeal development is also contrary to Policies Port/EN4 and Port/EN7 of the Portland Neighbourhood Plan, made June 2021 (NP) which seek high quality design and locally appropriate materials. Paragraph 141 of the Framework also states that the quality and character of places can suffer when advertisements are poorly sited and designed. This is also material in this case.

Other Matters

38. The application refers to the installation of a UPVC door. However, it is unclear from the plans and submissions whether this relates to the replacement of the existing double timber doors serving the appeal premises or the retention of the UPVC door to the left of the elevation which serves the upstairs flat, which appears on both the existing and proposed drawings. The Council do not refer to the door in their reasons for refusal. However, as I have found harm in respect of the appeal proposal, it has not been necessary for me to consider this further as it would not alter the conclusion I have come to on the main issues and the appeal overall.
39. I have considered other matters raised by interested parties including, but not limited to, littering and the intimidating effect of groups gathering outside the premises but given that I have identified harm in respect of the main issues, these are not matters on which my decision turns.

Conclusion

40. In respect of Appeal A, the proposed development would be contrary to the development plan and there are no other matters which outweigh this finding. In respect of Appeal B, the proposed advertisement would have a harmful effect on amenity. Accordingly, for the reasons given above, I conclude that both Appeal A and Appeal B should be dismissed.

Alison Fish

INSPECTOR