



Appeal Decision

Site visit made on 14 April 2025

by **A Veevers BA(Hons) PGDip(BCon) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 April 2025

Appeal Ref: APP/D2510/W/24/3351822

149 Roman Bank, Skegness, Lincolnshire PE25 1RY

- 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 Shamroz Khan against the decision of East Lindsey District Council.
 - The application Ref is S/153/00560/24.
 - The development proposed is change of use from former retail shop to a takeaway, with the installation of an extraction system and flue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application form appears to contain extensive arguments in support of the proposal. These are not acts of development in themselves. I have therefore used the description from the Council's Decision Notice which adequately describes the proposal.
3. At the time the application was made, it was stated on the application form that the work or change of use applied for had been completed. However, at the time of my visit, while I noted that some internal works had been carried out and that the extraction system being applied for was in place, the use as a hot food takeaway had not commenced. I have therefore assessed the development as a proposed development on the basis of the plans before me.
4. The appellant submitted additional information with the appeal. This includes technical details of the extraction system and photographs of the flue, with the distance to neighbouring properties annotated. I have considered this additional information taking into consideration the principles established by the Courts in *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823¹ which follows on from *Wheatcroft*². In this case, the additional information provides further evidence in relation to the Council's reason for refusal. It does not alter the nature of the scheme or location of the flue, which was subject to wider publicity. In any event, the Council and interested parties were able to view and make representations on the additional information and the Council have commented on it as part of their appeal submissions. For this reason, I consider that there would be no prejudice to any party, and I have therefore determined the appeal on the basis of this additional information.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

² *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37

5. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. However, as the Framework's policy content insofar as it relates to the main issues has not been significantly changed, other than paragraph numbers, there is no requirement for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.

Main Issue

6. The Council's reason for refusal relates only to the proposed extraction system, therefore the main issue relevant to this appeal is:
- the effect of the proposed extraction system on the living conditions of neighbouring occupiers on Roman Bank and Langton Court with particular regard to noise and odour.

Reasons

7. The appeal site is a semi-detached property which, due to minimal gaps between, appears as part of a terrace of mixed commercial and residential properties facing the busy Roman Road (A52) through Skegness. The ground floor was previously a retail shop and its signage remains. There is a self-contained flat on the first and second floor that is unrelated to the ground floor commercial use and is accessed separately from the side of the property.
8. Commercial uses dominate Roman Road in the vicinity of the appeal site, including some hot food takeaways, but they are interspersed by several residential properties and many of the commercial premises include a residential use above. To the rear of the site, land levels are lower than Roman Road, thus the row of buildings within which the appeal site sits appears two-storey facing Roman Road and three storey to the rear, where there is a shared parking, servicing and delivery area.
9. The Council's submissions confirm that the use of the appeal premises as hot food takeaway is acceptable in principle. On the basis of the information before me and my own observations, I have no reason to disagree. However, the Council has identified concerns with the proposed extraction system and considers the appellant has failed to demonstrate that the extraction system would not lead to adverse impacts on the living conditions of the occupiers of residential premises in the vicinity by reason of noise and odour.
10. The proposed extraction system was not in operation at the time of my visit as the use as a takeaway had not commenced. However, the appellant has submitted information in relation to the extraction system³ which includes details of flue ducting, grease extraction, fans, filters and noise attenuation. The appeal premises has been previously extended to the rear with a part two-storey/part single-storey flat roof extension. Due to the topography of the area, stainless steel ducting would lead from the ground floor cooking area at the front of the premises to an external flue located at first floor level in the rear elevation of the extension. The outward projection of the flue from the rear elevation would be relatively limited and the 'bird bent' flue outlet would be directed towards the flat roof above.

³ 'Installation of extraction system and flue' by Infinity Ventilation and Engineering Ltd (undated) including flue details - Express Duct Bird Beak with mesh 500mm; 50 MaXFan Compac and Aerofoil Axial Flow Fan by Woods (Technical Information) (undated) and CP03-CA-0500 and 0560 Silencer details, Ventilation Direct Ltd (undated)

11. Residential accommodation is located above the commercial premises, which I saw at my site visit included a modest-sized enclosed private outdoor terrace above the rear extensions. There is a similar arrangement of accommodation and outdoor terrace at the neighbouring property, 151 Roman Road and residential accommodation above neighbouring 145 Roman Road, albeit the rearward facing windows at this property are stepped back from the proposed external flue. To the immediate rear of the appeal site, separated by a fence and short garden, is 28 Langton Court (No 28), an end terraced bungalow. Several other bungalows off Langton Court are also located to the rear of the row of properties on Roman Bank.
12. The relationship between the appeal property, and immediate neighbours is therefore very close. In addition, the application form indicates that the premises would be open until 10pm every day. Consequently, in terms of noise from the proposed extraction system, it would be likely to generate noise at a time when most people would be likely to be at home and could reasonably expect quieter conditions within which to relax.
13. While details of the specific extraction fan that would be used at the site has been provided by the appellant, information in respect of its sound output when measured against ambient background noise levels has not been given. I am therefore unable to ascertain whether or not noise from the extraction system would be at an acceptable level when heard from the nearest noise sensitive residential receptor or whether, if required, noise attenuation measures would mitigate any adverse noise effects that could arise from the extraction fan during operation.
14. Evidence suggests that two silencers would be fitted to the proposed extraction system. From the information presented, one silencer (the CDA 500 X 1D) is purported to reduce noise levels of extraction fans by 7 to 10 dB(A). Even if that would be the case, I cannot be certain, on the evidence before me, that either one or more silencers would successfully mitigate potential noise emissions from the proposed horizontal extraction system such that it would not cause undue noise disturbance to neighbouring occupants. Therefore, notwithstanding the technical information submitted, I am not satisfied that I have sufficient information before me to conclude that the proposed extraction equipment would operate without excess noise emissions, nor that those impacts could be adequately mitigated.
15. In reaching this conclusion, I have had regard to the position, design and proximity of the external extraction flue to nearby residential properties, including the location of windows and private outdoor amenity space belonging to those properties.
16. With regards to odour, the proposed extraction system would include a pre-filter and a carbon filter. While the specifications of these filters have been provided, it is not clear how the filters would operate in respect of the specific design and position of the proposed extract flue in proximity to neighbouring residential properties in this case. I am not convinced from the evidence submitted, that the proposed bird beak horizontal extract system, the outlet of which would be below the height of windows in neighbouring residential properties, would not disperse odour towards these windows or neighbouring areas of private external outdoor space. As such, I cannot be certain that cooking odours emanating from the premises would be sufficiently neutralised.

17. I acknowledge that some horizontal extraction systems may be acceptable, but in this case, particularly due to the relatively low height of the external flue outlet, the available evidence does not show with a sufficient degree of clarity and precision that the odour or sound that would be emitted from the proposed extraction equipment would be of a satisfactory level that would not unduly harm the living conditions of nearby occupiers, a view reinforced by the objection from the Council's Environmental Health Officer.
18. The appellant claims that No 28 is a holiday let which is not occupied throughout the year. Furthermore, it is argued that the side elevation of No 28 contains no windows and would act as a barrier to any potential harm that could result from the proposed flue. Even if No 28 is a holiday let, the windows in the bungalow and its garden would still be close to the proposed external flue. Acceptable living conditions in relation to noise whilst enjoying a holiday would be an important consideration for its occupants.
19. I note the appellant would be willing to accept a condition requiring that further technical details of the extraction of cooking odours and fan noise be provided, and I note the appellant's dissatisfaction that this was not considered at the application stage. It is also suggested that the proposed extraction flue could be modified, and the horizontal flue replaced by a vertical flue. However, I cannot be certain that such details would not involve a new design of extract flue or other external mechanism which could result in a very different form of development to that applied for. This would be prejudicial to interested parties that would not have the opportunity to comment on any amended scheme.
20. Therefore, based on all the evidence before me, the proposed extraction system would fail to provide acceptable living conditions for neighbouring occupiers at Roman Bank and Langton Court with particular regard to noise and odour.
21. Accordingly, the proposal conflicts with Policy SP10 of the East Lindsey Local Plan Core Strategy, adopted July 2018. Amongst other things, this requires well-designed sustainable development. There would also be conflict with guidance at paragraph 135 (f) of the Framework which sets out that development should ensure a high standard of amenity for existing and future residents.

Other Matters

22. My attention has been drawn to two other seemingly similar developments at 157 and 167 Roman Bank that have been recently approved by the Council. I observed at my site visit that 157 Roman Bank was a retail shop and not a takeaway but noted that there was a recently installed flue at the adjacent hot food takeaway, Graikos, 159 Roman Bank. However, that flue was located on the side elevation of the property and extended vertically to eaves height of the main building. I was unable to access the rear of the takeaway at Milano's, 167 Roman Bank. Nevertheless, the Council suggest the extraction flue at this premises is also a vertical flue and is directed away from residential properties. I saw a vertical flue at the rear of 139 Roman Bank which extended above the eaves of the building.
23. The proposed extraction flue would differ from these examples because the external outlet would not be vertical and would be positioned at a low height on the appeal building. In any event, that there may be other extraction systems on other takeaway businesses in the area would not justify the harm that would result from

the proposal before me. I must determine this appeal on its own individual planning merits.

24. The appeal site is in an accessible urban location and the proposed use as a hot food takeaway would provide economic benefits including the creation of jobs in the local area as well as a choice of food in the locality. Nevertheless, whilst accepting that such uses require suitable ventilation and extraction, it has not been demonstrated that the proposed extraction system would be the only available design solution to provide this. In any event, the benefits advanced in this case are not considered sufficient to outweigh the harm I have identified.
25. I have noted the appellant's comments highlighting absence of identified harm to the appearance of the building or the area, highways and parking, waste storage and collection and foul sewage. Even if I were to agree that there would be no unacceptable effects on these matters, this is a neutral factor rather than one that carries positive weight in favour of the development.
26. I note the appellant's frustration with the Council in respect of the advice provided prior to submitting the application and an alleged impartiality. I also recognise that the appellant may have already made a significant financial investment in the appeal premises. While I understand the appellant's concerns regarding these matters, they have had no bearing on the outcome of this appeal as I have only had regard to the planning merits of the proposal that is before me.

Conclusion

27. For the above reasons and having regard to all other matters raised, the development conflicts with the development plan taken as a whole. There are no considerations which indicate a decision other than in accordance with the development plan. The appeal is dismissed.

A Veevers

INSPECTOR