



Appeal Decision

Site visit made on 8 April 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2025

Appeal Ref: APP/Z3825/C/24/3336623

The Hen and Chicken, Worthing Road, Southwater, Horsham, West Sussex RH13 9BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Naser Choudhury against an enforcement notice issued by Horsham District Council.
 - The enforcement notice was issued on 29 November 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the installation of metal ducting to the external elevation of the building comprising a mechanical extraction ventilation system in the approximate position shown on the attached plan.
 - The requirements of the notice are:
 - (i) Dismantle and remove the said metal ducting and extraction equipment from the external elevation of the building;
 - (ii) Make good the fabric of the building by infilling any holes left after removing the equipment and paint the walls to match existing; and
 - (iii) Remove the resulting scrap metal and debris from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) appeal, and the Deemed Planning Application (DPA)

Main Issues

2. The main issues are the effect of the development on:
 - the living conditions for the neighbouring residential occupiers on Netherton Close with particular regard to cooking odours, noise, and disturbance; and
 - the character and appearance of the host building and area.

Reasons

Living conditions for the neighbouring residential occupiers on Netherton Close-cooking odours, noise, and disturbance

3. The Hen and Chicken public house is situated within the Built-Up Area Boundary of Southwater. This appeal relates to the installation of an extraction duct attached to the public house. To the rear of the site and located close to the extraction duct is Netherton Close, a quiet residential cul-de-sac comprising predominantly two storey detached houses and chalet bungalows. Therefore, there is the potential for the living conditions of neighbouring occupiers to be affected by the introduction of the extraction equipment by way of vibrations, noise, fumes, and odours.
4. The appellant has submitted within Appendix A, B and C of their statement, technical evidence in relation to odours and noise. This information states that:
 - The ventilation ducting is fitted with silencers and carbon within the system, which reduces noise generation to 40db at a distance of 3m;
 - The ducting supports would be mounted on residual rubber anti vibration mountings to stop any reverberation noise travelling through the wall;
 - The carbon filters installed neutralise 95% of odours before discharging into the atmosphere;
 - A letter from Fewcul Engineering Company dated 10 August 2023, which states the extraction system and canopy hood has been serviced, and oil and grease removed in accordance with TR19 standards.
5. Whilst the above details are noted, the Officer's Report for the Enforcement Notice makes clear that noise from plant or machinery is required to be inaudible at the nearest noise sensitive premises during the operation of the extraction equipment. However, no noise assessment by an acoustic consultant has been provided to demonstrate that the noise from the existing extraction duct is inaudible from the nearest noise sensitive premises, and I note that the enforcement officer's report confirms noise was audible during their site visit. I too observed that the machinery was audible from Netherton Close, and therefore I have concerns that the plant does not achieve this objective.
6. Furthermore, noise from the extraction duct in the evenings and weekends, when background noise levels are typically lower, are likely to be more intrusive and consequentially more harmful. In addition, noise from the duct is expected to be particularly harmful during summer months when neighbouring occupiers are likely to have windows open for ventilation.
7. With regard to details of odour extraction the Environmental Health Officer has reviewed the information and states that their preferred method is for a non-impeded vertical discharge at efflux point, rather than the cowl. The Risk Assessment for Oil, Grease, Smoke and Odour from Commercial Kitchens provided by the Council also confirms that a high level of odour control is necessary for this development. Since the extraction equipment has already been installed and is operating, I also share the Council's concerns in relation to this. In addition, I also witnessed during my site visit, which was in the afternoon that there was an aroma of cooking smells coming from the

- extraction equipment on Netherton Close. I appreciate that this may vary at different times of the day and is dependent on wind and weather conditions.
8. Nevertheless, given the close proximity of neighbouring residents to the extraction system, and in the absence of any strong evidence that the existing extraction equipment is not causing harm, I am not satisfied that such important matters relating to noise and odour abatement should be left to a condition.
 9. Reference has been to another approval by Horsham District Council, in an attempt to demonstrate that matters relating to noise attenuation could be dealt with by condition. However, I do not have full details of that other case, and therefore cannot be certain if the circumstances of that approval are similar to the current appeal before me, or whether that development was also for a retrospective development. I therefore attach little weight to that other decision, which is in a completely different location, being in a town centre.
 10. For the above reasons, and in the absence of further compelling evidence, I conclude that the development harms the living conditions for neighbouring residential occupiers on Netherton Close with particular regard to cooking odours, noise and disturbance, in conflict with Policy 33 of the Horsham District Planning Framework, 2015 (HDPF). Amongst other things, this states that development shall be required to ensure that it is designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.

Character and appearance

11. Paragraph 202 of the National Planning Policy Framework (the Framework) advises that Heritage assets range from sites and buildings of local historic value to those of the highest significance.... These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
12. Paragraph 216 of the Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
13. The non-designated heritage asset relates the Hen and Chicken Public House which has been designated as a 'Parish Heritage Asset' in the Southwater Neighbourhood Plan, 2020 (SNP). Therefore, The Public House is considered to be locally significant and contributes to the character and appearance of the Parish. The significance of the building mainly stems from its traditional architecture dating back to 1742 and historic interest, having been in use as a public house for some 150 years. From my site visit I observed that building contains traditional materials such as brick and painted render walls, plain tiles roof and a prominent chimney stack to the side. Its simple traditional form and materials collectively make a positive contribution to the significance of this non-designated heritage asset.

14. The Council have recently refused planning permission (Council ref: DC/22/1715) for a same extract duct, the subject of this appeal. The Officer's Report for this decision commented that the extract duct *"would not be an unexpected addition to a building/use such as this."* I also agree with this statement, especially given the historic use the site as a public house which serves patrons food, some form of extraction equipment is essential for the lawful use of the site. Indeed, The Officer's Report goes on to state that: *"As such, although clearly visible from Worthing Road and surrounding properties and land it is not considered that the resulting impact on the character and appearance of the locality is unacceptable."*
15. Since the Notice has been served, I observed a black painted close boarded fence has been installed, outside the kitchen screening the lower parts of the duct from public views. Whilst the higher parts of the duct remain visible, the location of the duct is situated behind the existing tall chimney stack. Furthermore, the building has recently been painted a light grey. In combination, the position of the development and colour help to harmonise the extraction duct to the building and the surrounding area.
16. Therefore, on balance, I conclude that the development does not harm the character and appearance of the host building (a Parish Heritage Asset) and the area. In this respect the complies with Policies 33 and 34 of the HDPF, and Policies SNP16 and SNP19 of the SNP. Taken together, these require that development relates sympathetically with the built surroundings, that development will be required to reinforce the special character of the district's historic environment through appropriate siting, scale, form and design; and that development proposals will be supported where they protect Parish Heritage Assets.

Other matters

17. None of the other matters raised by the appellant, including the benefits to the appellant's business, outweighs the harms identified above with regard to the living conditions of neighbouring occupiers. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR