



Appeal Decision

Site visit made on 3 June 2025

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 June 2025

Appeal Ref: APP/Z1775/W/24/3354160

97A Commercial Road, Portsmouth PO1 1BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Anna Gosiewska against the decision of Portsmouth City Council.
 - The application Ref 23/01251/PLAREG was approved on 12 June 2024 and planning permission was granted subject to conditions.
 - The development permitted is retention of extract system to rear elevation.
 - The conditions in dispute are Nos 3 and 4 which state that:
Condition 3) *'An assessment of noise from the operation of the plant shall be undertaken using the procedures within British Standard BS44142:2014 and a report submitted to the local authority including proposed measures to mitigate any identified observed adverse effect levels. Upon approval all mitigation measures shall be implemented prior to the commencement of the use and thereafter maintained.'*
Condition 4) *'A risk assessment as per the method in Appendix 3 of "Control of Odour and Noise from Commercial Kitchen Exhaust Systems" EMAQ 2018. Approved equipment shall then be installed and maintained in accordance with the submitted programme.'*
 - The reasons given for the conditions are:
Condition 3) *'To comply with the policies of the Portsmouth Local Plan (2018)'*
Condition 4) *'To comply with the policies of the Portsmouth Local Plan (2018)'*
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Decision

1. The appeal is allowed and the planning permission Ref 23/01251/PLAREG for retention of extraction system to rear elevation at 97A Commercial Road, Portsmouth PO1 1BQ granted on 12 June 2024 by Portsmouth City Council, is varied by deleting conditions 3 and 4.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 12 December 2024 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.

Background and Main Issue

3. Planning permission Ref 23/01251/PLAREG was granted for the retention of an extraction system to the rear elevation of the host property. It was subject to a number of conditions, including Condition No.3 that required an assessment of noise from the operation of the plant to be submitted to the local planning authority to mitigate any adverse effects and Condition No.4 relating to a risk assessment in relation to the control of odour and noise. This appeal is made directly against the imposition of these two conditions.

4. The appellant considers that the conditions should have been discussed with them prior to the decision and that the application was supported by technical data sheets including acoustic performance. The Council considers that the two conditions are needed to protect residential amenity. However, the Council advise that both conditions were incorrectly worded due to an administrative error with no time limit imposed for the submission of the information. As such, the Council advise that the conditions are impossible to enforce upon and should be re-worded to include timescales for submission.
5. I therefore consider the main issue to be the effect that removing condition numbers 3 and 4 would have on the living conditions of nearby occupiers with particular regard to noise and odour.

Reasons

6. The appeal site comprises part of a four-storey building in a mixed commercial and residential area. The extraction equipment has been installed to the rear of the building serving a food and drink establishment fronting Commercial Road. There are residential units adjoining the host building.
7. The appellant advises that the application was supported by technical data sheets including acoustic performance data. Although the technical data sheets appear generic to the installed equipment, I have no evidence before me to find that the proposal was not installed in accordance with the data sheets. Furthermore, I have had regard to the equipment having been installed and operational since 2023 with no public comments or complaints received before or during the application process or as part of the appeal.
8. In light of this, and in the absence of any detailed evidence from the Council clearly demonstrating that the installed equipment is resulting in detrimental noise or odour concerns, I do not find the conditions necessary or reasonable.
9. For the above reasons, I conclude that the removal of condition numbers 3 and 4 would not have a harmful effect on the living conditions of nearby occupiers with particular regard to noise and odour. As such, there would be no conflict with policies PCS4, PCS14 and PCS23 of The Portsmouth Plan Portsmouth's Core Strategy (2012). Collectively, and in this respect, these policies aim to create a more prominent and welcoming city centre, improve the health and wellbeing of its residents, protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers as well as future residents and users of the development.

Conclusion

10. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions.

C Rose

INSPECTOR