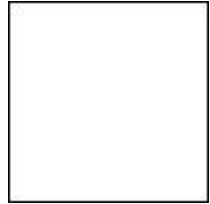


**TOWN AND COUNTRY PLANNING
ACT 1990 (AS AMENDED)**

**STATEMENT OF
HAVANT BOROUGH COUNCIL**

**48 Greywell Road
Havant
PO9 5AL**

**Local Planning Authority Reference:-13/01237/
Planning Inspectorate Reference:-
APP/X1735/A/14/2214363**



APPEAL BY Mrs C Nash AGAINST REF Change of use from use class A1 (retail) to A5 (fish and chip shop). AT 48 Greywell Road, Havant, PO9 5AL

Planning Inspectorate Reference:APP/X1735/A/14/2214363

LPA Ref:13/01237/

1.0 INTRODUCTION

- 1.1 The Local Planning Authority's statement of case will comprise the attached Committee Report and Minutes from the Development Management Committee meeting held on 23/01/2014, together with this supplementary information regarding the precise reason for refusal. It is considered that the committee report adequately provides the background to the case, site description etc and the Inspector is respectfully requested to read this in full first.
- 1.2 The reason for refusal relates to one issue, namely the impact on the amenities of adjacent residents resulting from odours and fumes from the proposed use. The precise wording of the reason for refusal is as follows:

'The proposed use of the premises would be detrimental to the amenities of residential properties in the area due to odours / fumes from the premises. It is therefore contrary to policies CS16 and DM5 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.'

2.0 RELEVANT PLANNING POLICIES

- 2.1 Since the determination of this application, the Government has revised and updated Planning Practice Guidance and on 6th March 2014 published a set of guidance notes to support the NPPF. Relevant to this appeal is the advice relating to Air Quality. The guidance states that when deciding whether air quality is relevant to a planning application, considerations should include, amongst other things, whether the proposal results in *'....new point sources of air pollution. This could include furnaces which require prior notification to local authorities; or extraction systems (including chimneys) which require approval under pollution control legislation....'* or *'Expose people to existing sources of air pollutants....'* The guidance goes on to discuss possible mitigation measures which should be proportionate to the likely impact and an example is cited as *'The design and layout of development to increase separation distances from sources of air pollution.'*
- 2.2 The key Policies of the Havant Borough Local Plan (Core Strategy) 2011 relevant to this appeal are CS16, DM10 and DM5, copies of which have been forwarded with the Appeal Questionnaire. This appeal proposal is specifically considered to be contrary to criteria 1. e) of Policy CS16:

e) The development does not cause unacceptable harm to the amenity of neighbours through

and criteria 1 - 3 inclusive of Policy DM5:

- 1. Measures are incorporated, where a proposal includes the preparation of hot food, to mitigate the effect on nearby properties.*
- 2. The measures proposed in respect of criterion 1 are such that the installation does not*
- 3. The measures proposed in respect of criterion 1 are suitable for the range and nature of hot food to be prepared on the premises.*

and criteria 1 and 2 of DM10:

1. *The health and safety of existing and future users of the site, or nearby occupiers and residents is not put at risk.*
2. *National air quality standards or objectives would not be breached.*

3.0 PLANNING CONSIDERATIONS

- 3.1 The submitted details include plan nos. KAD/01/A/LP which shows a ducted extraction system to include odour and acoustic controls, hidden in the internal ceiling of the ground floor unit and ducting onto the flat roof of the rear of the unit, in Bordon Road. The levels of the site are such that this ducting would be above the rear garages and just below the rear walkway which provides the amenity area and access for the maisonettes above. From Bordon Road this vent would therefore be approximately 5m above ground level, but this is in effect at ground level for the occupiers of the maisonettes above. The duct would literally be level with the private sitting out areas that the maisonettes have created on the first floor walkway. The duct would be approximately 8.5m from the rear façade of the maisonettes, but only 3m from the edge of the walkway used by residents.
- 3.2 Within these amenity areas on the walkway, residents have created private 'gardens' with chairs and tables, pot plants and washing lines etc. There is no doubt that the residents regularly use and derive great amenity from these gardens created at this level above Bordon Road.
- 3.3 The details submitted at application stage did not include any technical specifications of the *'An extraction system would be ducting directly out of the fryer unit, vented out to the rear of the unit (across the flat roof as shown on the proposal plan). It would include grease filtering at source prior to odour filtration and after the inline fan – acoustic dampening. There would be no open flame cooking and the odour control operation includes the use of clean oil in the fryer (as this reduces mall-aroma prior to the filtration system). Large volumes of air aren't needed for this style of non-hooded system and with reduced air-flow – a smaller and quieter fan is used so the background dBa would be insignificantly affected and cause no additional disturbance to the neighbouring residences.'*
- 3.4 Even if the filtration system met DEFRA's guidance for a fish and chip shop (which is different to other takeaways such as curry) the Environmental Health officer noted that there would nevertheless be some odour detectable. A fully maintained system would provide a degree of odour elimination but would not completely eliminate residual odour. Since the location of the extracting duct would be so close to the private amenity areas of the maisonettes above, who clearly regularly use and enjoy their created 'gardens', then it is considered that the introduction of this residual odour would be detrimental to the enjoyment of the amenity areas of these adjacent residents.
- 3.5 The new Planning Practice Guidance on Air Pollution specifically recommends design solutions increasing the separation distances from sources of air pollution to mitigate against possible amenity conflicts. In this instance the appellant does not have any control over the maisonettes above and therefore does not have owners consent to install a chimney or ventilation pipe venting above the eaves of the building. The Local Planning Authority is of the view that such a system may well be acceptable, but just because it is not a realistic option does not mean that the alternative should be accepted per se. The proximity of the proposed vent to the walkway, being just some 3m, would fail the new Planning Practice Guidance aiming to maximise separation distances, and would undoubtedly result in a loss of amenity to the users of the walkway.
- 3.6 It is considered that the residual smells from any extraction system would be apparent in the air. Being so close to the walkway these smells would not have a chance to disperse before affecting residents in the vicinity. This would be detrimental to their enjoyment of sitting out, could waft into rooms through open windows and leave an odour on washing out to dry. It is considered that such effects would be detrimental to the amenity of residents and be contrary to the adopted policies CS16, DM5 and DM10 as quoted above.

4.0 CONCLUSIONS

- 4.1 It is the opinion of the Local Planning Authority that the location of the proposed extraction duct, at 'ground level' to the residents of the maisonettes and within just 3m of the walkway, would result in the residual smells and odours from any extraction system being unduly close and unable to dissipate before detrimentally affecting the amenity of nearby residents. This is considered to be contrary to both the new Planning practice Guidance on air Pollution and the relevant policies of the Havant Borough Council Local Plan (Core Strategy) 2011, CS16, DM5 and DM10.

APPENDICES

- A List of Suggested Conditions
- B Site Plan and Plan of Havant Borough