

Appeal Decision

Site visit made on 28 April 2014

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 June 2014

Appeal Ref: APP/X1735/A/14/2214363

48 Greywell Road, Havant, Hampshire PO9 5AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Caroline Nash against the decision of Havant Borough Council.
 - The application Ref APP/13/01237, dated 10 December 2013, was refused by notice dated 24 January 2014.
 - The development proposed is convert empty A1 unit to A5 Fish and Chip Shop.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of residential occupiers with regard to the potential for odours/fumes.

Reasons

3. The appeal property is a vacant ground floor unit located in a primary frontage within a district shopping centre, with other commercial units at ground floor to each side. To the front it faces part of the pedestrianized Greywell shopping precinct, whilst to the rear it backs onto Bordon Road. Above the commercial units are flats, with elevated external walkways at first floor to front and rear. Sections of the rear walkway have been partitioned to provide small private 'gardens' immediately adjacent to the flats.
 4. As part of the proposal to change the use of the premises, a ducted fume extraction system is proposed, which would emerge above a flat roof to the rear of the property. The outlet would be approximately 3m from the railings which mark the edge of the elevated walkway, with the 'gardens' of the flats beyond.
 5. From the evidence before me, it appears that the flats, including the one immediately above the appeal site, have little or no outdoor amenity space other than those small 'gardens' to the rear. Those areas appear to be used for sitting outside, and domestic activities such as hanging washing. Notwithstanding the location within a district centre, I consider it to be a reasonable expectation of the occupiers that they should enjoy a satisfactory
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level of amenity, without significant harm to their living conditions as a result of fumes or odour.

6. The appellant indicates that a ducted extraction system with odour and acoustic controls would be provided as shown on drawing no. KAD/01/A/LP and that it would include grease filtering at source, and the use of clean oil in the fryer. However, the Council indicates that even if the filtration system met DEFRA's guidance for a fish and chip shop, there would nevertheless be some odour detectable.
7. The Environmental Health Officer has raised some concerns regarding the potential for cooking odours affecting the amenity of local residents. Whilst suggesting conditions in the event that the application was allowed, he also commented that the 'best practicable means' would involve ducting terminating not less than 1 metre above the ridge line of the building.
8. Although I have few technical details of the proposed ducted extraction system, from the evidence before me, given that the outlet would emerge approximately at the level of the walkway and that it would vent very close to the flats, I consider that fumes and odours would have little opportunity to disperse, and that such fumes would adversely effect the occupiers' use and enjoyment of their 'garden' areas.
9. The proposal is therefore contrary to policies CS16 and DM5 of the Havant Borough Core Strategy 2011 which, amongst other matters require that proposals, including those for A5 uses, should not cause unacceptable harm to the amenity of neighbours as a result of smell. That approach is broadly consistent with the National Planning Policy Framework's requirement that planning should seek to provide a good standard of amenity for all existing and future occupants of buildings. The Planning Practice Guidance also seeks to increase separation distances from sources of air pollution, although I appreciate that there may be limited opportunity to do that in this case.
10. I noted on my visit that there were a number of vacant units within the district centre. In bringing back into active use a unit which I understand has been vacant since January 2010, the scheme could make a small contribution to the vitality and viability of the centre, and would provide additional employment. However, those benefits do not outweigh the significant harm that I have identified to the living conditions of nearby residential occupiers.
11. Finally, I note the appellant's concern that the scheme was refused contrary to the Officer's recommendation following a well-organised campaign. However, I have considered the scheme on its merits, and for the above reasons, and having regard to all other matters raised, the appeal is dismissed.

Chris Couper

INSPECTOR