
Appeal Decision

Site visit made on 7 June 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 22 June 2016

Appeal Ref: APP/T1410/W/16/3145941

42 Meads Street, Eastbourne, East Sussex BN20 7RG

- 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 Ms Hui Sheng against the decision of Eastbourne Borough Council.
 - The application Ref PC/150975, dated 15 September 2015, was refused by notice dated 26 November 2015.
 - The development proposed is the replacement of existing pitched roof to outbuilding with a raised flat roof to allow internal extract ductwork to be installed in connection with a Chinese restaurant.
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Decision

1. The appeal is allowed and planning permission is granted for the replacement of existing pitched roof to outbuilding with a raised flat roof to allow internal extract ductwork to be installed in connection with a Chinese restaurant at 42 Meads Street, Eastbourne, East Sussex BN20 7RG, in accordance with the terms of the application, Ref PC/150975, dated 15 September 2015, and subject to the conditions set out in the Schedule to this decision.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of nearby residents, with particular reference to cooking smells and noise.

Reasons

3. The appeal site is situated within a row terrace of properties with two storeys of residential accommodation above ground floor commercial uses.
 4. The existing outbuilding is situated to the rear of the outrigger extension of No 42, within a well enclosed yard area. There are a number of windows to residential properties in close proximity to the proposed development, including one directly above in the adjoining outrigger extension.
 5. However, in my experience, cooking odours can be controlled by the use and maintenance of a suitable extraction system. No evidence has been provided to suggest that the cooking smells would in any way be unusual and I therefore see no compelling reason why a condition requiring the installation and maintenance of such equipment would not provide an adequate safeguard in this case.
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6. Moreover, the appeal site is already in use as a restaurant and therefore there is currently potential for neighbouring residents to experience odours emanating from the premises. This is particularly so given the limited existing extract ventilation system, which amounts to a window mounted vent-axia unit positioned in the back of the property, in line with the residential windows above. In contrast, the plans for the appeal proposal show the exhaust louver vent positioned on the back wall of the extension, away from the nearest windows and facing towards the rear of the yard area.
7. Although the land use to the rear of the site is also residential, given the separation and degree of enclosure, I do not consider that the occupiers of those properties would be materially affected by the proposal.
8. The proposed plans also show silencer units around the fans but no noise assessment has been carried out. On the advice of the Council's Specialist Advisor for Environmental Health, a condition was recommended to be attached to any permission granted, detailing that such a system must be in line with the correct British Standard¹ for assessing industrial and commercial sound. I see no reason to disagree with this approach which would provide adequate safeguards relating to sound attenuation so as to protect the living conditions of nearby residents.
9. I therefore conclude that conditions requiring the use of a suitable fume extraction system and sound attenuation for the same, would ensure that nearby residents would not be unacceptably affected by cooking smells and noise. Such an approach would be in accordance paragraph 203 of the National Planning Policy Framework (the Framework), which states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
10. The Council's reason for refusal does not refer to any specific policy conflict. I have nevertheless had regard to those policies listed in the Council's Committee report. Of those that I consider relevant to this main issue, I do not find conflict with Policy B2 of the Eastbourne Plan Submission Core Strategy 2006-2027 (CS) or Saved Policy HO20 of the Eastbourne Borough Plan 2001-2011 (BP). These require, amongst other matters, schemes to protect the residential and environmental amenity of existing and future residents and state that proposals will be refused unless they can demonstrate that they do not cause unacceptable noise, general disturbance or odour.

Other matters

11. The appeal site is located within the Meads Conservation Area. Having regard to the size and siting of the proposal, as well as the screening provided by the adjacent neighbouring extension, the boundary walls and the existing planting, views of the proposed development would be limited and restricted to the private views of occupants of a small number of nearby residential properties. Within this context, the loss of an existing mono-pitched roof of a small outbuilding of no particular architectural merit, to the development proposed, would not have a material effect and as such would preserve the character and appearance of the Conservation Area, the desirability of which is fully anticipated by section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, CS Policy D10 and BP Policy UHT15.

¹ BSI Standards Publication BS 4142:2014 – Methods for rating and assessing industrial and commercial sound

12. I note that objections have been raised regarding the use of the premises as a takeaway and that it has been suggested that the best route for the extractor ducting would be through the joint chimney stack between No 40 and 42 so as to vent at roof level. However, these are not the proposals currently before me and I have no information to demonstrate that the latter is technically feasible. In any case, I have found the current proposal to be acceptable for the reasons I have explained.

Conditions

13. I have had regard to the conditions that have been suggested by the Council.
14. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
15. In order to ensure that the proposal is not harmful to the living conditions of nearby residents in terms of cooking smells, I have imposed a condition requiring the precise details of the ventilation equipment to be agreed by the Council. For the same reason I have imposed a noise condition as suggested by the Council but I have amended the wording to ensure compliance with paragraph 206 of the Framework.

Conclusion

16. For the reasons given above, and taking into account all other matters raised, I conclude the appeal should be allowed.

Richard S Jones

Inspector

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 248900-01; 248900-02 and 248900-03 Rev b.
- 3) Works to the outbuilding hereby approved shall not commence until details of the system to control the emission of fumes and smells from the premises has been submitted to and approved in writing by the local planning authority. The system shall be installed in accordance with the approved details and shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 4) Works to the outbuilding hereby approved shall not commence until details of the noise attenuation for the system to control the emission of fumes and smells in accordance with the current British Standard BS4142 2014 methods for rating and assessing industrial and commercial sound regulations, has been submitted to and approved in writing by the local planning authority. The noise attenuation shall be implemented in accordance with the approved details prior to the operation of the system to control the emission of fumes and smells, and thereafter retained for as long as the use continues.