



Appeal Decision

Site visit made on 29 November 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2021

Appeal Ref: APP/W1905/W/21/3276929

113 High Road, Broxbourne EN10 7BS

- 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 Mr Engin Tanak against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/0162/F, dated 21 January 2021, was refused by notice dated 19 May 2021.
 - The development proposed is change of use of beauty salon (sui generis) to (class E) restaurant, opening hours: 0800 - 2300 Monday - Saturday and 0800 - 1800 Sunday, and installation of extractor ventilation system (part retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Upon inspection I was able to verify that an extractor ventilation system (the extraction system), which includes an external flue, has been installed at the site. Thus, whilst the intended use has yet to commence, the proposal, consistent with the description of development given, is part-retrospective. I shall consider the appeal on this basis.

Main Issue

3. The effect upon the living conditions of neighbouring residential occupiers, having particular regard to noise.

Reasons

4. The ground floor of the appeal property is currently vacant. It was last occupied as a beauty salon, having historically operated as an estate agency. Flats are situated above, and the site's immediate surroundings are predominated by residential uses. Indeed, Nos 109 and 111 High Road (Nos 109 and 111) are dwellinghouses that abut the site. To the rear, and outside of the appeal site's limits, is an area of hardstanding that offers parking opportunities (the parking area). It has also been brought to my attention that planning permission¹ was recently granted (that renewed a previous consent) for a new dwelling to be built upon the rear portion of the parking area.
5. Whilst the site is set away from the Broxbourne Local Centre (the Local Centre), given that a commercial use well-suited to a local centre location last occupied the property, the proposal would not have a damaging influence on

¹ 07/21/0171/F

the vitality and viability of the Local Centre. It is also the case that Policy RTC3 of the Broxbourne Local Plan (June 2020) (the Local Plan) does not explicitly prohibit the establishment of evening and night-time uses outside of the Borough's centres.

6. However, Policy RTC3 indicates that proposals for evening and night-time uses will be assessed against a range of criteria. These include the impact upon the amenity of neighbouring residents. Specific to the issue of noise, Policy EQ4 of the Local Plan indicates that new development emitting noise levels noticeably above background levels on a consistent or consistently periodic basis should ideally be sited away from noise sensitive land uses, including residential accommodation.
7. The proposal is supported by a Noise Impact Assessment² (the NIA) that assesses the impact of the extraction system upon the nearest noise sensitive receptors. It has been calculated that the extraction system, when operated, would have a significant adverse impact upon the closest receptor (on-site at first floor). This would be due to surveyed background noise levels being exceeded by 13dB. On this basis, as acknowledged in the NIA, noise complaints would be likely.
8. A short schedule of suggested noise control measures is set out within the NIA, which includes the provision of an acoustic enclosure. Vibration measures are also listed, yet I am led to understand that rubber pads have already been installed. To my mind, the necessary certainty that adequate mitigation measures could be put in place to control noise emissions from the extraction system has not been provided. Indeed, the Council's Environmental Health Department, in its role as a specialist internal consultee, has objected to the scheme based on inadequate assurances having been provided in a noise attenuation sense. Thus, most particularly when noting the proximity of various residential occupiers to the extraction system (including at Nos 109 and 111), this is not a matter that could be dealt with satisfactorily by way of a planning condition.
9. Furthermore, notwithstanding the relatively modest extent of commercial floorspace under consideration and the defined hours of operation that are intended, the proposed use would still hold the potential to generate operational noise during late evening hours on a consistent periodic basis. This would include via comings and goings occurring immediately alongside noise-sensitive receptors in an area predominated by residential uses. Even when acknowledging that some background noise would already be generated by existing movements along High Road, the introduction of occurrences of late evening noise would realistically be anticipated to be to the detriment of neighbouring occupiers' living conditions. It has not been clearly demonstrated otherwise, nor that a fit-for-purpose schedule of potential control/mitigation measures could be actioned satisfactorily.
10. I accept that separate controls outside of the planning system would also exist (including with respect to licensing and the policing of anti-social behaviour). However, such potential restrictions do not provide adequate assurances that the amenities of local residential occupiers would be fully safeguarded. I note here that it is my role to consider the merits of the proposal in planning terms and against the development plan as the starting point for decision making.

² Mono Acoustics Limited, January 2021

11. For the above reasons, whilst I have no clear reason to consider that undue overlooking would be promoted, the proposal would be anticipated to cause harm to the living conditions of neighbouring residential occupiers having particular regard to noise. The scheme conflicts with Policies EQ1, EQ4 and RTC3 of the Local Plan in so far as these policies set out that proposals which generate noise must not result in material harm to the amenity levels currently enjoyed in an area. For the avoidance of doubt, I do not find conflict with Policy DSC1 of the Local Plan given the lack of any direct reference to living conditions or residential amenity matters.

Other Matters

12. Nos 115 and 117 High Road (Nos 115 and 117) are Grade II Listed and situated directly to the south of the site. Their significance and special interest as designated heritage assets is drawn in-part from their historic origins, consistent form and ornamental detailing. The extraction system's flue does not rise to above the full ridge height of the appeal property. Indeed, its discreet position to the rear of the site means that merely fleeting views of its uppermost part are available from High Road. Thus, available views of Nos 115 and 117 are not impacted to any material degree. Whilst acknowledging that a change of use is also intended, I find that the proposal would not cause harm to the heritage significance of either No 115 or No 117 through bringing forward development within their settings.
13. I have noted objections/concerns raised by interested parties with respect to matters including parking and highway safety. Owing to the absence of any external areas within the red line extent of the appeal site, had I been minded to come to a positive conclusion upon the appeal's main issue, I would have sought further representations from the main parties in the interests of attaining clarity and understanding of the intended parking and servicing arrangements. However, as I have found the proposal to be unacceptable for reasons related to the effect upon neighbouring living conditions, it has not been necessary for me to explore such matters further.
14. The scheme would bring back into active use an accessibly located commercial property that has lain vacant for an extended period of time. It is evident that a high level of occupation exists at the Local Centre and I am led to understand that similar circumstances apply at Hoddesdon Town Centre. Nevertheless, even in this context, the economic and social benefits associated with bringing forward a single restaurant use at this site attract relatively limited weight that would be insufficient to outweigh the significant harm that would likely be caused to the living conditions of neighbouring residential occupiers. The scheme conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

15. For the reasons set out above, the appeal is dismissed.

Andrew Smith

INSPECTOR