



Appeal Decision

Site visit made on 4 March 2010

by **Megan Thomas BA Hons in Law,**
Barrister

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

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Decision date:
30 March 2010

Appeal Ref: APP/Q1445/A/09/2111612 **121 Portland Road, Hove, East Sussex BN3 5QY**

- 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 Howard Hamilton against the decision of Brighton & Hove City Council.
- The application Ref BH2008/02488, dated 22 July 2008, was refused by notice dated 4 March 2009.
- The development proposed is the installation of extract equipment passing through adjacent shop, exiting at light well and terminating above dormer roof level.

Decision

1. I allow the appeal, and grant planning permission for the installation of extract equipment passing through adjacent shop, exiting at light well and terminating above dormer roof level at 121 Portland Road, Hove, East Sussex BN3 5QY in accordance with the terms of the application, Ref. BH2008/02488, dated 22 July 2008, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted and the installation of any extract equipment associated with it shall not be carried out except (i) in complete accordance with the details shown on the submitted plans, numbered 101, 20, 21 & 22 and the manufacturer's specification and declaration and (ii) in complete accordance with the specifications and mitigation measures contained in the noise report dated 5 November 2008 by Acoustic Associates and the addendum noise report dated 17 August 2009 by Acoustic Associates Sussex Ltd. The duct work and extract equipment shall thereafter be retained as installed and operated in accordance with the manufacturer's instructions.
 - 3) Breakout noise from the extract duct within the light well shall not exceed 35dBA with a maximum level at the 63Hz octave band of 33dB measured at the nearest openable window within the light well.
 - 4) No cooking and no use of the extract equipment shall take place at 121c Portland Road outside the hours of 0800 and 2300 daily.

Procedural Matters

2. I have used wording very similar to the description of development given on the Notice of Decision rather than the description written on the planning application form as I consider it to be more precise. I have used the word 'light well' rather than 'service well' as I consider that it better describes the function of the well.

Main Issues

3. The effect of the proposal on the living conditions of residents of nearby residential units with regard to noise, vibration and light.

Reasons

4. The proposal relates to a vacant ground floor hot food takeaway unit situated at 121c Portland Road in a large building comprising retail outlets in Portland Road with two floors of residential flats above. A new extraction duct is sought for the takeaway unit and it is proposed to run it through the ceiling void at 121c Portland Road into the ceiling void at 121b Portland Road and out into the light well which is shared by shop units 121a and 121b Portland Road and some of the residential flats above.
5. There are several windows which look into the light well. However they are predominantly WC, shower and bathroom windows with obscured glass. The ducting would be attached to the outer wall of the light well which has no windows in it. The duct would be stainless steel and rectangular measuring 200mm by 400mm with a bottom silencer and anti-vibration fixings. The hook shaped grill to the open air would be about 1.3m above the nearest window openings to the uppermost flats.
6. The dimensions of the ducting and its location as it passes up the light well indicate that the amount of light it would block from those windows would be negligible. I do not therefore consider that the living conditions of occupants of the flats with fenestration opening into the light well would suffer any undue loss of light to those windows by reason of the proposed development. I was able to confirm this on my site visit having had access to some of the windows which open onto the light well.
7. In respect of any undue noise, vibration or any disturbance which might arise from the development, I am satisfied that this can be overcome by the imposition of appropriate conditions. As noise predictions are based on a particular specification of cooker hood, fan, filters, silencers and other integral parts, it is necessary to specify both the duct work and associated extract equipment is caught by any planning condition. In the interests of proper planning and to ensure that there is no unacceptable disturbance from the use of the extraction system, I have imposed a condition which requires that the duct work and associated extract equipment is installed in strict accordance with the submitted plans and the two noise reports and is thereafter retained as installed and operated in accordance with the manufacturer's instructions.
8. In relation to any noise from the proposed development as it passes under the floors of residential flats, the attenuated duct-borne fan noise would have to

break out of the duct work into the duct enclosure before travelling through the separating floor into the residential areas above. Taking into account, the likely attenuation performance of materials used in the flats' floors and shop ceilings, it is unlikely that fan noise would be audible in the flats above. I do not therefore consider it necessary to require additional sound insulation measures to be taken in relation to the duct work which passes underneath residential flats. However, having noted the evidence of the Council's Environmental Health Officer that provided it is maintained, mechanical equipment need not get to a level where it causes disturbance, condition 2 requires the duct work and extract equipment to be retained as installed and operated in accordance with the manufacturer's instructions. This would ensure that any noise or vibration which might otherwise arise through deterioration of the equipment is avoided.

9. In order to ensure that flat residents are not unduly disturbed by noise, I have considered the evidence of background noise recorded on a Friday afternoon through to a Monday morning and I consider that a condition which requires breakout noise from the ventilation duct within the light well to not exceed 35dBA with a maximum level at the 63Hz octave band of 33dB measured at the nearest openable window within the light well to be sufficient to ensure that there is no undue disturbance.
10. However, I consider it is important to ensure that there is no use of the extract equipment during the very late evening and early hours of the morning given the background noise levels recorded at these times and therefore I have imposed a condition which restricts cooking hours to between 0800 and 2300 on a daily basis. The Council's suggested condition was that the use and opening hours of the takeaway should be restricted to between 0800 and 2230. I have not been told whether the takeaway use has any restriction on its use through a planning permission or any other mechanism but from the information I have, which includes the background noise readings, it is sufficient in my view to ensure that any cooking ceases by 2300. Furthermore, in order to protect amenity, the condition also specifies that the extract equipment shall not be used outside the hours of 0800 and 2300.
11. Having regard to the conditions imposed, I find that there would be no undue harm to the living conditions of occupants of nearby flats by reason of noise or vibration.

Other Matters

12. Given the position of the outlet above the light well, I am satisfied that any fumes and odours would not cause an unacceptable odour intrusion. Whilst there may be some use of the adjacent flat roof as an amenity area, there is insufficient evidence to convince me that odours would interfere with enjoyment of that use.
13. The Council have raised the possibility of there being harm to flat residents through a perceived reduction in living standards. Whilst residents may be aware of the existence of the ducting, I am not persuaded that they would consider their living standards to have been reduced in any way by dint of the development.

Overall Conclusion

14. I conclude that the proposal would not result in undue harm to the living conditions of the occupants of nearby residential flats by reason of noise, loss of light or odour and that policies QD27 and SU10 of the Brighton & Hove Local Plan 2005 are not breached. I allow the appeal and grant conditional planning permission.

Megan Thomas

INSPECTOR