
Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 20-Jul-2017

Subject: Planning Application 2015/92291 Variation of condition 3 (extractor flue) on previous permission 2012/92279 for change of use from newsagent (A1) to hot food takeaway (A5) and installation of flue 48, Bradley Road, Bradley, Huddersfield, HD2 1XD

APPLICANT

Mr Mohammed Ali, c/o
agent

DATE VALID

21-Aug-2015

TARGET DATE

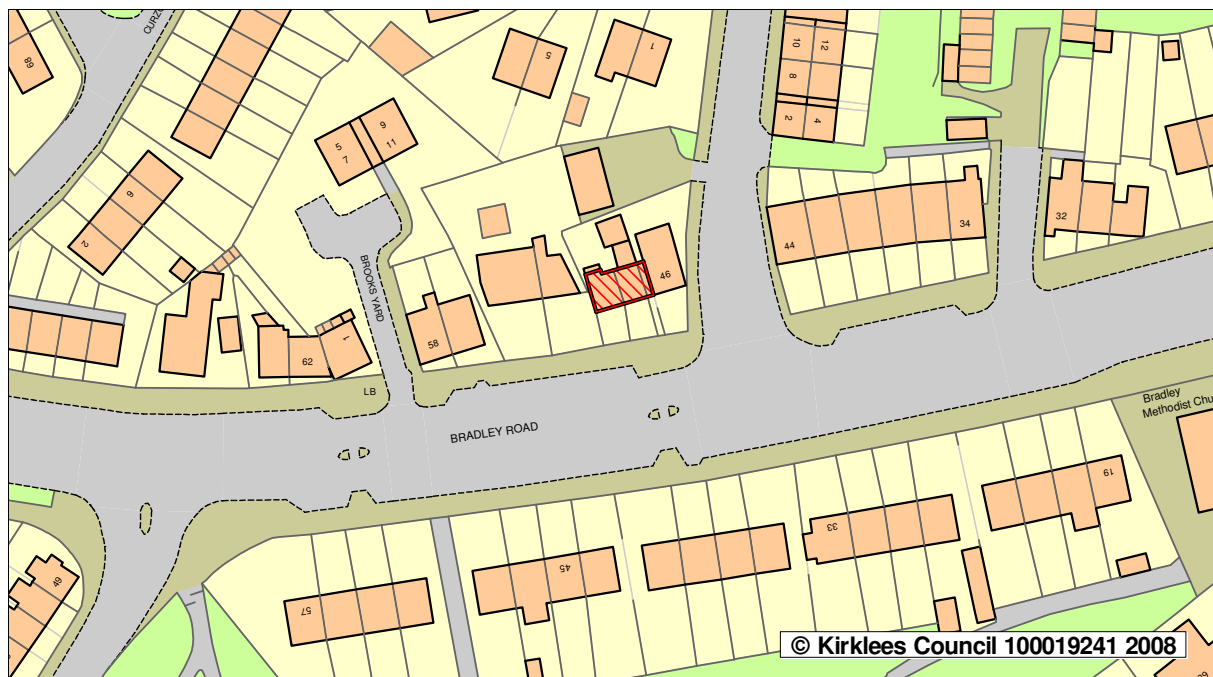
16-Oct-2015

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Ashbrow

No

Ward Members consulted

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION:

- 1.1 This application is brought before Sub-Committee for determination because of: (i) the substantial level of local objection, and (ii) a request by Ward Councillor Jean Calvert. Cllr Calvert's reason for requesting a Sub-Committee decision is based on 'residential amenity' as follows:

"Residents were not convinced that the retrospective planning application that has been agreed is being built to standard can someone go and have a look please. The other issue is the outstanding application for the flues – if you are mindful to agree this can it go to committee please residents want some reassurance that 2 flues will not be used."

- 1.2 The Chair of Sub-Committee has confirmed that Cllr Calvert's reason for making this request and the request for a site visit is valid having regard to the Councillors' Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 48 Bradley Road is a two-storey building constructed in stone with a tiled roof, located on the north side of Bradley Road. It was formerly in retail use at ground floor but has permission to be used as a hot food takeaway, and to install a flue. A flue has been installed and some of the external works associated with permission 2015/90982 have been carried out, including the installation of security shutters. But according to the agent it has not yet commenced trading as a takeaway.

2.2 The site has a substantial forecourt at the front with a low stone wall forming the boundary with the highway. To the rear is a larger yard with a high stone wall to the west. There is a small single-storey lean-to structure on the rear elevation, aligned to the west, in which a flue has been placed, and there is a larger single-storey rear extension to the side of this. The adjoining property to the east, to which it is attached (no. 46), is in residential use. The adjacent property to the west is also a hot food takeaway, in separate ownership. The wider area is mainly residential.

3.0 PROPOSAL:

3.1 The applicant has submitted a planning application under Section 73 of the Town and Country Planning Act 1990 to vary condition (3) on permission 2012/92279 for the change of use from A1 to hot food takeaway and installation of flue. The condition reads:

“The use hereby permitted shall not begin until the arrangements for air treatment and extraction detailed in the supporting information submitted 26th October 2012, including the flue shown on the drawing submitted on 26th October 2012, have been installed. Such works shall thereafter be retained, operated at all times when the takeaway is in use and maintained in accordance with the manufacturer’s instructions.

Reason: So as to ensure that residential properties in the vicinity of the site are not adversely affected by fumes or odours, and to accord with the aims of Policies D2 and S14 of the Unitary Development Plan and the National Planning Policy Framework.”

3.2 The drawing referred to in this condition shows a flue located near the rear right-hand corner of building, protruding through the roof of the small single-storey lean-to structure and terminating just above the gutter line of the main roof.

3.3 The applicant wishes to vary the permission so to allow a larger flue, sited on the left-hand side of the lean-to structure and at its highest point 850mm above the ridge of the main roof. The flue has already been installed. It was originally plain metal but since its installation it has been painted black.

3.4 The original proposal was for the retention of the new unauthorised flue to be in addition to the one actually shown on the original plans. The agent has however submitted further technical information to show that the one flue will be adequate to process all emissions and that no additional flue will be required. The agent has also confirmed that all externally visible parts of the flue can be painted matt black (which has now been undertaken). The amended details of the flue are shown on a drawing received in March 2016. The technical details received in October 2016 and 29th June 2017 from M&M Metal Fabrications (dated 22nd June) provide information regarding the flue itself and the operation of the wider extract ventilation system.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2012/92279 – Change of use from A1 to hot food takeaway and installation of flue. Approved. The proposal has been partially implemented by carrying out some internal works associated with the change of use and the installation of a flue, but flue design and position are not in accordance with the approved details. This application was reported to sub-committee.
2015/92290 – Installation of second flue – Withdrawn
2016/90140 – Formation of ramped access, erection of detached toilet, raising of roof, installation of barbed wire fencing, rendering of side walls and other alterations to rear store and preparation room, installation of new shop front with cash machine and roller shutter. Approved; development is in progress.

4.2 Enforcement history

- 4.3 COMP/15/0215 – alleged unauthorised installation of flue. This has resulted in the submission of the application now before sub-committee.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 14-Oct-2016: Agent was advised that the flue would need to be colour-coated to reduce its visual impact.

05-Jan-2017: The agent was asked to provide additional technical information to demonstrate that a single flue would be able to deal with emissions suitably whilst keeping noise to an acceptable level. The agent was also requested to provide a plan accurately showing the flue as installed. The report below is compiled following the submission of the revised information and plans.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage Officers consider considerable weight can be afforded to the Publication Draft Local Plan. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

The site is without notation on the UDP proposals map.

6.2

- D2 – General principles
- S14 – Hot food takeaways
- EP4 – Noise-sensitive and noise-generating development
- BE1 – Design principles
- BE2 – Quality of design

Kirklees Publication Draft Local Plan: Submitted for examination April 2017 (PDLP)

The site is without notation within the publication draft local plan.

Policies:

PLP 16 – Food and drink uses and the evening economy

PLP 24 – Design

PLP 52 – Protection and improvement of environmental quality.

National Planning Guidance:

6.3 National Planning Policy Framework.

- NPPF Building a strong competitive economy
- NPPF Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Letter of objection from one neighbouring property, and a 54-signature petition.

Summary of concerns raised:

1. The new flue is larger than on the approved plan and in the wrong position.
2. The flue is an eyesore and I can see it from my garden.
3. A second flue would be even worse because it would be even nearer my property and noisier.
4. Increased odours and rubbish.
5. Other building work has been done which is shoddy and not in accordance with the plans that have been approved.

Ward Councillor Jean Calvert – requests a Committee decision if officers minded to approve, for the reason set out in paragraph 1.1.

8.0 CONSULTATION RESPONSES:

8.1 **Statutory:** There are no statutory consultees.

8.2 **Non-statutory:**

- 8.3 KC Environmental Services – “I have reviewed the information supplied regarding the extract ventilation system installed at 48 Bradley Road. I can confirm that it is satisfactory therefore I have no objection to the application being approved”.

9.0 **MAIN ISSUES**

- Principle of development
- Urban design issues
- Residential amenity
- Representations
- Other matters

10.0 **APPRAISAL**

Principle of development

- 10.1 The principle of change of use of the premises to a hot food takeaway has been accepted and the current application relates solely to the variation of condition 3 regarding the air treatment and extraction system. The reason this condition was imposed was to “so as to ensure that residential properties in the vicinity of the site are not adversely affected by fumes or odours”. In addition the external appearance of the new flue, in respect of its scale, position and siting could impact on the visual amenity of the area. The main factors to be considered are therefore visual amenity, and any potential impacts on residential amenity arising from potential noise or odours associated with the flue/extract ventilation system.
- 10.2 The proposal will be assessed having regard to the following Policies contained within the NPPF. Building a strong competitive economy – this advises that significant weight should be placed on the need to secure sustainable economic growth through the planning system. Conserving and enhancing the natural environment – advises that planning policies and decisions should aim to prevent noise giving rise to significant adverse impacts on health and quality of life, while not placing unreasonable restrictions on businesses. Furthermore that the planning system should prevent existing development from being adversely affected by unacceptable levels of, amongst other things, air and noise pollution.
- 10.3 Within the UDP, the main relevant Policy relating to hot food takeaway proposals is S14. This states that proposals for hot food takeaways will be considered having regard to, amongst other things, the effect on residential amenity and the visual impact of any alterations proposed. In addition Policy D2, states that decisions should consider impacts on visual and residential amenity and the character of the surroundings, BE1-2 which states that development should be visually attractive and respect the character of its surroundings and EP4, which states that proposals for noise-generating uses

close to existing noise-sensitive development should take into account the impact of projected noise levels.

Urban Design issues

- 10.4 The flue is an overall height of 5.55m projecting from the roof of the single storey extension to a point 2.5m above the eaves and 850mm above the ridge of the roof. It has a black painted finish. It is partly shielded from public view by the presence of no. 46, which projects further to the rear than no. 48, and cannot be clearly seen from Bradley Road to the south. From the north, it can be seen from Upper Quarry Road which is on rising land looking towards the site. It is considered that as originally installed, with a galvanised metal finish, it had some negative impact on visual amenity.
- 10.5 It is considered however that the appearance of the flue has been significantly improved by painting it matt black. The existing roof tiles are dark grey and removing the bright and shiny surface to the flue has assisted in assimilating it in its surroundings to an acceptable degree.
- 10.6 It is generally preferable that external flues should be given a factory applied colour finish before first installation as this eliminates the potential that a painted finish will deteriorate. However, having regard to the fact that there is already a plain metal flue on the neighbouring take-away (although smaller), retaining the existing metal flue painted black is considered to be a reasonable solution to mitigating its visual appearance. Planning officers are currently seeking to ascertain whether the flue has been painted using a preparatory product suitable for galvanised surfaces.
- 10.7 Subject to the requirement that the flue is retained in a painted matt black finish, the variation of condition 3 would not result in undue harm to visual amenity and would accord with the aims of Policies D2, BE1-2 of the UDP. It would also accord with Policy PLP 16 of the PDLP insofar as the appearance of the flue associated with the food use is acceptable.

Residential Amenity

- 10.8 The technical information submitted by the applicant provides information to demonstrate that the flue will be sufficient to process all emissions from the takeaway. Confirmation has been received from Environmental Services to verify this is the case. Provided a suitable air extraction and filtration equipment can be installed, either before the takeaway is brought into use or within a specified period of time following a grant of planning permission, the authorised use would not give rise to loss of residential amenity as a result of either fumes or noise, and would accord with the aims of Policy S15 and EP4 and policies within Chapter 11 of the NPPF. It would also comply with Policies PLP 16 and PLP52 of the PDLP as the impact of noise and fumes would not unduly affect the existing amenities of residents.

- 10.9 No 46 Bradley Road has an attic bedroom window overlooking the site from the side, which is approximately 6m from the flue, or 2m closer than the flue would have been in its original approved position. It is also noted that the flue is over 2m higher than the one originally approved as part of permission 2012/92279 – this means that it now reaches above the level of this bedroom window cill, and so it will be more clearly visible from the window. However, the direct line of sight taken at 90 degrees from the window is over the roof of no. 48, not over the flue, and it is considered that the flue could not give rise to any significant obstruction to light or outlook. It is considered on balance that it would be difficult to demonstrate that the flue causes undue harm to the outlook currently enjoyed from this window. In addition subject to all air extraction facilities being installed and maintained in accordance with the manufacturer's instructions it is considered that the flue would not have an undue effect on the residential amenities of the occupiers of this property.

Representations

- 10.10 Concerns relating to residential amenity and visual amenity issues have been examined in the main part of the assessment but are highlighted here together with other issues raised and officer responses.
- 10.11 The new flue is larger than on the approved plan and in the wrong position.
Response: It is noted that the flue is different to the one shown on the approved plan for 2012/92279. The current plans for this application however, accurately show the flue that has been installed and the application is being assessed on this basis.
- 10.12 The flue is an eyesore and I can see it from my garden.
Response: The issue of visual amenity has been assessed in 10.4-10.7 above and it is considered that the appearance of the flue has been acceptably mitigated by painting it black.
- 10.13 A second flue would be even worse because it would be even nearer my property and noisier.
Response: It is noted that the flue would be moved closer to no. 46 which is in residential use but the proposed extract ventilation system would not give rise to material noise nuisance to this property, provided this is installed and operated in accordance with the manufacturer's recommendations. It would not be a second flue as the application, as amended, seeks to operate the business with a single extract ventilation flue.
- 10.14 Increased odours and rubbish.
Response: As set out in 10.8 above, any unacceptable odours can be prevented as long as suitable air treatment facilities are used and maintained at all times when the takeaway is in use, which can be controlled by condition. The variation of condition does not represent an intensification of the use so there it is not expected that it will result in increased litter.

10.15 Other building work has been done which is shoddy and not in accordance with the plans that have been approved.

Response: The quality of the work undertaken is not a material consideration. The flue, subject of this application, was not erected in accordance with the approved plans but retrospective approval is sought by means of this application.

Other Matters

10.16 Conditions.

Section 73 of the Town and Country Planning Act 1990 allows the Local Planning Authority to review the existing planning conditions and update, revise, add to or delete redundant conditions as part of the assessment of the planning application.

10.17 Since the granting of planning permission no. 2012/92279 the development has been commenced, so the original condition (1) on time limit for commencement is no longer applicable.

10.18 As the flue has been installed and painted and no further external works remain to be undertaken, the original condition (2), requiring that development is carried out in full accordance with the approved plans and specifications, is no longer necessary.

10.19 The original condition (3) required that the arrangements for air treatment and extraction submitted on 26th October 2012 must be installed before the use commences. This condition should be updated to take into account the new details and specifications submitted with the current application including the flue.

10.20 The previous condition (4) – that no activities may be carried out on the premises, including deliveries to or dispatches from the premises or service to customers outside the hours of 10:00 to 23:30 on any day – is considered reasonable and should be re-applied so as to prevent noise disturbance to residential properties near the site.

11.0 CONCLUSION

11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.2 It is considered that allowing the variation of condition 3 of planning permission no. 2012/92279, subject to the conditions recommended below would allow the authorised take-away to operate without undue detriment to either residential or visual amenity.

11.3 This assessment has taken into consideration the development plan, the emerging local plan, national policy guidance and other material considerations. It is considered that subject to the wording of the conditions set out below the variation of the terms of the original planning permission would constitute sustainable development.

12.0 CONDITIONS

1. The use hereby permitted shall not begin until the arrangements for air treatment and extraction detailed in the supporting information from M and M Metal Fabrications, including technical data sheet from Northern Fan Supplies submitted - 29th June 2017, and including the flue shown on the approved drawings, have been installed in complete accordance with these details. Such works shall thereafter be retained, operated at all times when the takeaway is in use and maintained in accordance with the manufacturer's instructions.

2. No activities shall be carried out on the premises, including deliveries to or dispatches from the premises or service to customers outside the hours of 10:00 to 23:30 on any day.

3. The external flue shall be retained in a matt black painted finish for the lifetime of the development.

Background Papers:

Application and history files.

2015/92291:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f92291>

Certificate of Ownership –Certificate A signed: 17th July 2015.