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## Appeal Decision

Site visit made on 13 August 2018

**by G J Fort BA PGDip LLM MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2018**

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**Appeal Ref: APP/M2325/W/17/3191531**

**126 St Andrews Road South, Lytham St Annes FY8 1YA**

- 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 James Glassbrook against the decision of Fylde Borough Council.
  - The application Ref 16/0464, dated 23 June 2016, was refused by notice dated 16 June 2017.
  - The development proposed is the change of use of ground and first floor of property as a restaurant (use class A3) and a hot food takeaway (use class A5) with the installation of extraction louvres to rear, first floor bay window to rear and pitched roof dormer to rear
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. In the banner heading above I have used a slightly amended form of the description of development given on the Council's Decision Notice rather than the one on the application form<sup>1</sup> as this includes the proposed physical alterations to the property as well as the change of use. I note also that the appellant accepted the wording as registered by the Council, and used it on the appeal form.
3. On 24 July 2018 the Ministry of Housing Communities and Local Government issued the new National Planning Policy Framework (the Framework), which supplants the previous version of the document relevant at the time of the Council's decision on the application that led to this appeal. As the Framework establishes<sup>2</sup> that it is a material consideration in planning decisions from the day of its publication comments were sought from the parties on its bearing on the appeal. Consequently, I consider that no prejudice would occur to the parties as a result of me taking the Framework into account in my assessment of the appeal's planning merits.

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<sup>1</sup> Which is "use of ground and first floor of property as a restaurant (Use Class A3) and hot food takeaway (Use Class A5)"

<sup>2</sup> At paragraphs 2 and 212

## **Main Issue**

4. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupants of adjacent residential properties in terms of noise, disturbance and odour.

## **Reasons**

5. The appeal building is part of a semi-detached pair in a short block of properties which front St Andrew's Road with commercial uses at their ground floors. The rear aspects of 39 and 41 Victoria Road run more or less parallel with the flank of the appeal property, and their short back gardens border its grounds. With the exception of the commercial uses on St Andrews Road, several of which including the appeal property and its next door neighbour are vacant, the immediate surroundings are predominantly residential in character.
6. According to the application form the appeal scheme, as described above, would introduce a hot food take away and restaurant both within the established commercial parts of the building at lower floors, and the residential element of the building at the first floor, which would be open until midnight Mondays to Sundays. Staff parking would be supplied in the yard to the rear of the property, which would be accessed via the narrow servicing road running between the flanks of 37 and 39 Victoria Road.
7. Due to the nature of hot food takeaway uses there is a likelihood of a high frequency of trips to that element of the proposed development in terms of both vehicular and pedestrian movement arising from customers and deliveries associated with the use. Moreover, whilst the restaurant use would have a different pattern of trips associated with it given the length of time customers are likely to stay on the premises, it would lead to a requirement for longer term parking than the hot food takeaway element, and also may well entail taxi journeys. Furthermore, the position of the staff parking in the yard to the rear of the appeal property would be likely to increase movements along the narrow service road, and its constrained layout, including tandem parking as shown on the submitted plan, could lead to excessive manoeuvring, particularly during the hours following the proposed closing time, when a much quieter noise environment could be expected within the predominantly residential environs.
8. Consequently, due to the extent of the proposed development taken together with the mooted hours of opening there is a strong likelihood that it would give rise to a substantial increase in comings and goings to the appeal property when compared with its existing authorised use. This intensification of movement taken together with the attendant sounds of engines, the opening and closing of car doors and the voices of customers when arriving at or leaving the premises late at night would all be intrusive when compared to the generally quieter noise environment to be expected in this predominantly residential area. This would be particularly marked in terms of activity associated with overspill parking on Victoria Road, and from increased late night use of the service road, which is narrow and tightly bounded by the flanks of Nos 37 and 39, with the former having several ground and first floor windows abutting that road.
9. Furthermore, due to the presence of the flank first floor window at the appeal property and its close proximity to the rears of Nos 39 and 41, the sounds of larger groups using the stairs would be intrusive in the later hours, when the

occupants of those adjacent properties may be using their first floor bedrooms. Moreover, noise transfer between the appeal property and the upper parts of the adjoining property (No 124), which the Council indicates is in residential use would also be intrusive, particularly in the later evening. These aspects of the proposal would add materially to its overall noise and disturbance impacts.

10. Taking these matters together leads me to the view that the proposed development would cause material harm to the living conditions of adjacent occupants in terms of noise and disturbance. Whilst I note that the appellant considers a theoretical proposal for a similar use elsewhere within the block would have broadly comparable effects, this is not what is proposed in this instance, and moreover, does not serve to justify the appeal scheme's harmful impacts in these regards.
11. The siting of the proposed extraction louvres would be at some distance from 39 and 41 Victoria Road. Moreover, intervening structures including the tall boundary wall and the projecting two-storey rear wing of the appeal property would be between the proposed louvres and Nos 39 and 41. I am also of the view that were the other aspects of the proposed development acceptable in planning terms that conditions could control the specification of any extraction equipment to minimise the noise and odour it would create. Consequently, I consider that no harmful effects would occur to the living conditions of the occupants of adjacent properties in terms of noise or odour emanating from the proposed louvres. Nevertheless the proposed development's lack of harm in this respect does not overcome its other harmful noise and disturbance effects.
12. Consequently, these considerations taken together, lead me to the conclusion on this main issue that the proposed development would cause harm to the living conditions of the occupants of adjacent dwellings. For these reasons it would conflict with Policy SH16 of the Fylde Local Plan (adopted October 2005) and the Framework. Taken together, and amongst other matters, these policies seek to ensure that the amenities of nearby residents are not unduly prejudiced by the development of restaurants and hot food takeaways; and that developments create places with a high standard of amenity for existing and future users.

### **Other Matters**

13. The appellant intends to offer a vegan menu at the proposed use, and considers that there are health benefits of such food. Be that as it may, as the change of use applied for would not restrict any future operators at the site from providing differing menus, this is a matter that carries only the most limited weight in favour of the appeal proposal.
14. The proposed development could bring the property, which has been empty for a number of years, has failed to sell at auction, and has been subject to vandalism, back into what the appellant considers to be a viable use. I also note the appellant's references to the general economic pressures on smaller commercial parades, such as the one within which the appeal site sits, and the potential for the appeal scheme to encourage the re-use of other empty properties within its environs. These would be benefits of the proposed development; however, as it is unclear whether other less harmful uses of the appeal property could also have beneficial outcomes in these respects, they are not matters that weigh heavily in favour of the appeal scheme.

15. The proposed development could entail measures which would avoid harmful overlooking of neighbouring residential properties. However, this merely points to an absence of harm in these respects rather than a positive benefit of the scheme, and as a result has only a neutral effect on the overall planning balance.
16. Consequently, taken together, these other matters do not alter my conclusions in respect of the main issue set out above, or justify a decision other than in accordance with the development plan, with which, in terms of the above-cited policy, the appeal scheme would clearly conflict.

### **Conclusion**

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

*G J Fort*

INSPECTOR