

PLANNING INSPECTORATE APPEAL DECISIONS		
20198007A	10 FRIAR LANE, FERNANDEZ GRILLHOUSE AND 1 BERRIDGE STREET	
Proposal:	REMOVAL OF CONDITIONS 1 (LIMITED PERIOD CONSENT), 2 (VENTILATION SYSTEM RETAINED), 4 (NOISE LEVEL) AND 5 (NO DETRIMENT FROM FLUE) ATTACHED TO PLANNING PERMISSION 20181049 RETENTION OF VENTILATION FLUE TO REAR OF RESTAURANT (CLASS A3)	
Appellant:	FERNANDEZ GRILLHOUSE	
Appeal type:	Planning Appeal	
Appeal received:	25 February 2019	
Appeal decision:	Allowed	
Appeal dec date:	13 June 2019	
ACB	AREA: C	WARD: Castle



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Summary

- Planning permission 20181049 was granted for retention of ventilation flue at rear of restaurant subject to limited period consent.
- Appeal received was against conditions attached to the permission relating to the limited period, the retention of the flue, a noise level and the flue not to cause a detrimental impact on neighbours.

- Conditions relating to the limited period, noise level and no detrimental impact were removed.

The Site

The site consists of two properties, 10 Friar Lane is a five storey building whilst 1 Berridge Street is a three storey building. They are located within the Greyfriars Conservation Area and the Townscape Heritage Initiative area. The ground floor and basement of 10 Friar Lane are in use as a restaurant whilst the upper floors are in use as flats. The entirety of 1 Berridge Street is in use as a solicitors' office.

The Proposal and Decision

In October 2018 planning permission 20181049 was granted at your committee meeting for the retention of an extraction flue and abatement unit to the rear of the restaurant on a limited period basis for 6 months.

The Appeal

An appeal was submitted against the conditions that were attached to the planning permission. The conditions appealed against were 1 (limited period permission), 2 (retention of the flue), 4 (noise level of the flue) and 5 (no detrimental impact on residents)

The Appeal Decision

The appeal against conditions 1, 4 and 5 was allowed. The appeal against condition 2 was dismissed.

An application for costs from the appellant was also allowed although confirmation of the amount to be claimed is yet to be received.

Consideration

Condition 1

The inspector considered that Planning Practice Guidance stated that a temporary permission may be appropriate where a trial run is required in order to assess the impact of development on an area, but that it is rarely justifiable to grant a second temporary permission. The Inspector considered that monitoring of the flue had taken place and that there was no further need to monitor the flue particularly as the reasons for imposing the limited period were not clear. The inspector therefore removed the condition.

Condition 2

This condition requires the ventilation system and abatement unit to be retained in accordance with the approved details for the lifetime of the restaurant use. The appellant stated that this contradicts the limited period condition. The inspector agreed that this was the case, however as they determined that condition 1 should be deleted they considered that condition 2 should remain and dismissed the appeal against this condition.

Condition 4

This condition controls the noise levels that the flue can generate. It is limited to 55dB(A) when measured 1 metre from the flue. The appellant stated that as the

background noise level is higher than this it is not possible to comply with the noise level as set in the condition. The Inspector considered that this was the case and therefore the condition was not enforceable, precise or reasonable. The inspector therefore allowed the appeal against this condition.

Condition 5

This condition states that the operation of the flue shall not be detrimental to the amenity of the occupiers of any property in the vicinity of the site by reason of fumes, smoke, or odour. The appellant stated that if the flue operates correctly it will not cause any harm to local residents. The Inspector considered that the condition was not necessary as the reason for imposing it was the same as conditions 2 and 3. The Inspector further considered that the condition did not contain any mechanism for measuring detriment to local amenities and was vague and difficult to enforce. The condition therefore fails the 6 tests for conditions and the appeal was allowed against this condition.

Commentary

The decision is in line with the government advice to not repeatedly grant limited period permissions. Although the conditions 1, 4 and 5 are removed I consider that conditions 2 and 3 of the permission which are still in place are aimed to safeguard the residential amenity. In addition there is separate control to deal with smells and noise under the Environmental Protection Act. With regard to condition 5 this was a condition that is generally attached to planning permissions involving ventilation flues to control impact of pollutants; the implications of this decision are that the drafting of this condition will need to be reviewed in terms of improving enforceability.