

## Appeal Decisions

Accompanied site visit made on 13 September 2016

**by Felix Bourne BA(Hons) LARTPI Solicitor**

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

**Decision date: 3 October 2016**

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**Appeal ref: APP/H5390/C/16/3145865 (the enforcement appeal)  
262-264 Uxbridge Road, London, W12 7JA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
- The appeal is made by Mr Ghandi Seleiman.
- The Notice was issued on 12 January 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of an extraction duct to the side elevation of No 262 and to the rear elevation of No. 264 at first and second floor levels.
- The requirements of the notice are to remove from the land the extraction duct and all associated materials and fittings from the land, or: Install the extraction ducting in accordance with the approved drawing FR-UR-M001 Rev P1 of planning permission (ref: 2014/05593/FUL).
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

**Summary of decision: The appeal is dismissed and the Notice is upheld.**

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**Appeal Ref: APP/H590/W/16/3145868 (the section 78 appeal)  
262-264 Uxbridge Road, London, W12 7JA**

- 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 Aldimashqi Ltd against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref: 2015/04997/FUL dated 19 October 2015 and registered by the Council on 6 November 2015 was refused by notice dated 21 December 2015.
- The development is described in the application as "installation of an extract duct at the rear of 262-264 Uxbridge Road (retrospective)" and, in the Council's Notice of Refusal, as "retention of an extraction duct to the side elevation of the rear extension at No. 262 and to the rear elevation of No. 264 at first and second floor levels".

**Summary of decision: The appeal is dismissed.**

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### THE SECTION 78 APPEAL, AND THE DEEMED APPLICATION

#### Main Issues

1. The first main issue is the effect of the development on the appearance of the terrace on which the development has been constructed and its effect on those living in the flats to the rear, known as Arlington House, both in terms of its appearance and the possibility of problems arising in relation to cooking odours. The second main issue is the effect of the ducting on the living

conditions in the residential flats at first and second floor level at Nos. 262 and 264, both in terms of cooking odours and the possibility of noise and vibration and, in relation to one unit, with regard to loss of outlook.

## **Discussion**

2. Planning permission was granted, in January 2015 (LPA ref:2014/05593/FUL) for the installation of a duct on the rear elevation of No. 264, to serve a new bakery. However, the duct was not built in accordance with the permission because the appellants, who had an adjoining restaurant at No. 262, decided to provide an extract duct for the restaurant kitchen. They sought to achieve this by erecting a section of horizontal ducting to link up with a vertical duct at No. 264, which was itself somewhat larger than that for which planning permission had been granted, presumably because it would need to serve two premises and not one. However, this raised a number of issues, as identified above.
3. Looking at the first main issue, there are a number of extraction ducts fitted to the rear of properties in the vicinity in Uxbridge Road, and some of these, including the appeal development, are readily visible from the amenity space of the residents in Arlington House. At a lower level there are also several air conditioning units to the rear of the properties in Uxbridge Road. However, notwithstanding that the ducting subject of the appeals has a powder-coated paint finish, the fact that it stretches horizontally along the flank wall of the single storey extension to No.262, before turning and then proceeding horizontally along the rear wall of No. 264, before joining the vertical duct to No. 264, makes it particularly, and unnecessarily, intrusive in visual terms. Whilst unable to view from within Arlington House, this is something which could clearly be assessed from the access and amenity space to that block of flats, which lies between Arlington House itself and the rear of the Uxbridge Road properties. This visual intrusiveness is exacerbated by the fact that the ducting is also larger than that permitted in 2015, and that it crosses the window to one of the residential units above the bakery at No. 264. The development is thus in conflict with Policy BE1 of the Core Strategy 2011 and with Policy DM G3 of the Development Management Local Plan 2013.
4. As to the question of cooking odours, the design of the ducting as a whole, with its various turns and considerable length, seems to prevent the system working as effectively as it should. Moreover, instead of terminating at least a metre above the eaves, and with a construction designed to increase the velocity of ejected gases, (as in the scheme for which planning permission was granted) the Council's Environmental Health Department has found that the duct terminates only just above the eaves of 264 Uxbridge Road, at a level close to the walkway. The Environmental Health Officer found that the fumes were not discharging with sufficient velocity to take them upward for dispersal but instead seemed to spill out sideways and along the rear of Arlington House.
5. With regard to the effect on living conditions of the duct where it crosses the window of the residential property above the bakery at No. 264, I note the appellants' argument that this does not inhibit the use of the unit as such: however, whilst I did not view from inside the unit in question, it was obvious that the presence of the ducting must inhibit the view from that window and must cut down light to it. It is, as the Council argue, unneighbourly as well as

being unattractive, and in conflict with Policy DM A9 of the Development Management Local Plan 2013.

6. The Council's Environmental Health Officer has also identified the risk of unacceptable noise and vibration arising from the design of the duct and, without details to demonstrate that the duct could operate satisfactorily, the scheme is again in conflict with Core Strategy and Local Plan policies.
7. To sum up, therefore, the objections to the scheme are significant, bringing the development into conflict with development plan policies, and are such that permission must be refused, including in relation to the deemed application. I shall accordingly turn to consider the appeal on ground (g).

### **THE APPEAL ON GROUND (g)**

8. The enforcement notice specifies a period of two months as the period for compliance. However, the appellant, pointing out that compliance would result in the kitchen to the restaurant having no extraction system, argues that sufficient time would therefore be needed to agree a revised scheme and implement it, and asks for a period of four months.
9. The appellant has the option of complying with the Notice in such a way that the operation of No. 264 will be able to continue with a suitable extraction duct. It is not suggested that these works cannot be completed within two months and, such are the drawbacks with the current scheme that I consider it inappropriate to extend the period for compliance at this stage. However, the Council will no doubt bear in mind their own powers to extend the period for compliance with the Notice should circumstances justify it. In the meanwhile, however, the appeal on ground (g) fails.

### **FORMAL DECISIONS**

#### **APP/H5390/C/16/3145865 (the enforcement appeal)**

10. The appeal on ground (g) is dismissed and planning permission is refused in relation to the deemed application. The enforcement notice is upheld.

#### **APP/H5390/W/16/3145868 (the section 78 appeal)**

11. The appeal is dismissed and planning permission is refused.

*Felix Bourne*

**Felix Bourne**

INSPECTOR