The Planning Inspectorate

Appeal Decision

Site visit made on 21 October 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 9 November 2016

Appeal Ref : APP/L5810/C/16/3145253
Ground floor shop, 130 High Street, Teddington, TW11 8JB.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Henry Camilleri against an enforcement notice issued by the Council of the London Borough of Richmond Upon Thames.
- The notice was issued on 18 January 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a low level extract duct at the rear of the land to facilitate the temporary A3 use of the land.
- The requirements of the notice are (i) remove the duct; and (ii) make good any damage caused arising from compliance with step (i) above; and (iii) remove from the land all associated debris arising from the compliance with steps (i) and (ii) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is allowed, the enforcement notice is quashed and planning permission is granted subject to conditions set out below in the Formal Decision

Ground (a) appeal and deemed application

Main Issues

1. The main issues in the determination of this appeal are the effect of the development on (i) the character and appearance of the host property and surrounding area with particular regard to its location in a conservation area and (ii) the living conditions of occupiers of nearby properties with particular regard to odour, fumes and noise and disturbance.

Character and appearance

2. The development plan (including the London Plan, Core Strategy and Development Management Development Plan (the DM Plan)) mirrors the National Planning Policy Framework (the Framework) in emphasising the need for development to respect its setting and to preserve or enhance heritage assets. Policy CP7 of the Core Strategy provides that existing buildings of recognised high quality and historic interest will be protected from inappropriate development and enhanced sensitively. Policy DM HD3 of the DM Plan provides that the Council will seek to ensure and encourage the preservation and enhancement of Buildings of Townscape Merit and that proposals should protect and enhance their setting.

3. The appeal site is a mid-terraced four storey building within a parade of shops and part of a secondary shopping frontage. The ground floor is currently in temporary A3 use with residential units above. It is a Building of Townscape Merit and within the High Street Teddington Conservation Area (the Conservation Area) which forms part of the varied and busy commercial centre of Teddington. The Conservation Area has a traditional high street character with many fine shopfronts.

4. The duct the subject of the notice is at the rear of the property, located on the roof of the single storey rear extension and it serves the kitchen of the premises. The duct faces a vehicular accessway at the rear of the property. The duct is set back from the front of the roof on which its sits and is silver in colour. The positioning of the duct at the rear of the property does not affect the characteristics of the frontage of the building that contribute to its status as a Building of Townscape Merit.

5. The Council say that its location is unsuitable and that it appears unduly prominent along the rear alleyway and I note the views of a neighbour concerned about its appearance. But the rear alleyway is significantly different to the front of the properties and provides access to the rear of the parade of shops in which the site sits. It appears more of a service area and makes little contribution to the overall appearance of the Conservation Area and has no positive effect on its overall character. I saw at my site visit that there are a number of extract ducts, air conditioning units and plant to the rear of other properties in the parade, including prominent ducts at the neighbouring property. In this context the duct is modest in size and not uncharacteristic of its immediate setting. Given the relatively small size of the duct in relation to the overall scale of the parade, the service orientated appearance of the rear of this parade of shops and the proliferation of ventilation and extraction equipment in the immediate area I consider that the duct does not appear incongruous or unduly prominent in its setting. I note that some of the equipment nearby might be immune from enforcement action but it nevertheless contributes to the appearance of the area.

6. Establishments where cooking takes place can be expected to require extraction equipment in order to minimise odour emissions. In terms of appearance such equipment would not generally enhance the building and that is the case here. But the duct is only visible from the rear accessway and from upper windows at the rear of the site where it is viewed in the context of other ducts, air conditioning units, flues and plant of neighbouring property. Given the limited viewpoints I find no material harm to the setting of the building. It creates no significant visual impact in the context of other more intrusive features nearby.

7. Although they do not propose an appropriate condition in the event that the appeal is allowed the Council say that the duct has not been painted or treated to minimise its impact. But I do not find its silver colour to be harmful to the character and appearance of the host building or surrounding area.

8. For the reasons given on balance I conclude that the unauthorised duct does not cause undue harm to the character or appearance of the host property or surrounding area. It preserves the character and appearance of the

Conservation Area and accords with relevant policies of the development plan, including policy CP7 of the Core Strategy.

Living conditions

9. Policy DM DC5 of the DM Plan provides that development must not prejudice adjoining properties from unreasonable pollution, visual intrusion, noise or disturbance. The nearest residential neighbours are the occupiers of the flats in the upper floors of the appeal site and dwellinghouses some distance away in Upney Park Road. I note the objections of neighbours who complain about noise and fumes.

10. Given the separation distances between the duct and neighbouring properties, the modest size of the duct and its setting at the rear of the premises I do not consider that it causes undue harm to the outlook of neighbouring properties.

11. I agree with the Council that there is the potential for odour, fumes and noise and disturbance but these issues can be satisfactorily controlled by condition. It may be that some or all of the conditions have already been achieved but that is for the Council and Appellant to consider.

Other matters

12. I note the complaints of neighbours. Some of the concerns raised such as the use of the property and complaints about an earlier duct are outside the remit of this appeal and not for me to comment on.

Conditions

13. I have considered the need for conditions. I have taken into account the Planning Practice Guidance (the Guidance).The Council propose a set of suggested conditions in the event that the appeal is allowed which have not been questioned by the Appellant. These conditions concern noise, fumes and odour and hours of operation. They require the submission of a technical report by the Appellant but I think it more appropriate to require an agreed scheme and to set out the consequence of non-compliance and I have drafted the conditions accordingly.

14. In relation to noise control the Council propose a condition that limits the level of noise from the duct to existing background noise levels at nearby properties. I agree that a condition limiting noise levels is necessary and appropriate to protect the living conditions of neighbours. The proposed condition specifies specific measurements of noise at defined points and is precise in this respect. But I do not consider it necessary to refer to the potential for alternative positions for assessment as this will be part of the agreed scheme.

15. The Council propose a condition to require the submission and agreement of a scheme for the extraction and treatment of fumes and odours. I agree that the control of fumes is necessary and reasonable. However, I do not see that it is necessary to incorporate into the condition specific references to documentation and amend the condition accordingly. I also agree that the minimisation of structure borne sound is necessary and reasonable but have amended the Council's proposed condition to require approval of measures in the interests of precision and certainty.

16. The Council propose that the hours of operation of the duct be limited to between 08:00 and 23:00 Monday to Sunday inclusive. I agree that it is reasonable and necessary to limit the hours of operation to protect the living conditions of occupiers of nearby properties. I have not been provided with the opening hours of the premises or its neighbours but I consider the proposed hours to be reasonable and precise.

17. I have considered the suggestion of a neighbour that a condition be imposed to provide for visual screening but as I have not found identified harm to the character and appearance of the building or surrounding area I do not consider this to be necessary.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to conditions.

Formal Decision

19. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for a low level extract duct at the rear of 130 High Street, Teddington, TW11 8JB,as shown on the plan attached to the notice being development already carried out subject to the following conditions:

1. The development hereby permitted shall only operate between the following hours: 0800- 2300 Monday – Sundays (inclusive);

2. Unless within 3 months of the date of this decision a scheme for the extraction and treatment of fumes and odours generated from cooking is submitted to and approved in writing by the local planning authority the duct shall cease to be used until such time as the scheme is approved and implemented. All equipment, plant or process agreed as part of the approved scheme shall be installed, operated and maintained in accordance with that approval and retained for so long as the use continues;

3. Unless within 3 months of the date of this decision a scheme to demonstrate that the level of noise emitted from the development shall not exceed the existing background noise levels at all times that the system is operated is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval the duct shall cease to be used until such time as a scheme is approved and implemented. The measured or calculated noise levels shall be determined at the boundary of the nearest ground floor noise sensitive premises or 1 metre from the façade of the nearest first floor (or higher) noise sensitive premises (or such other position as may be agreed) and in accordance with the latest British standard;

4. Unless within 3 months of the date of this decision the development is isolated on adequate proprietary anti-vibration mounts in a way which will minimise transmission of vibration and regenerated noise within adjoining premises in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority the duct shall cease to be used until such time as a scheme is approved and implemented. The measures implemented as approved shall be retained thereafter;

5. If schemes in accordance with conditions 2, 3 and 4 above are not approved within 12 months of the date of this decision the use of the duct shall cease until such time as each of the schemes approved by the local planning authority is implemented.

S.Prail

Inspector