

Appeal Decisions

Site visit made on 1 February 2017

by George Mapson DipTP DipLD MRTPI

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

Decision date: 02 March 2017

Appeal 1 - Ref: APP/W4705/C/16/3154165

Appeal 2 - Ref: APP/W4705/W/16/3151219

203 Great Horton Road, Bradford, BD7 1RP

- **Appeal 1** is made by Mr Nadeem Khan (Snooty's Pizza Bar) under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the decision of the City of Bradford Metropolitan District Council to issue an enforcement notice.
- The notice Ref. 15/00712/ENFUNA was issued on 23 June 2016.
- The breach of planning control as alleged in the notice is: *"The unauthorised installation of an extractor flue to the side elevation of the building on the land"*.
- The requirements of the notice are set out in Article 5 of the notice. They are:
"i. Remove the unauthorised extractor flue and all means of fixing from the rear of the building on the land. ii. Remove from the land all materials resulting from the removal specified in Article 5(i) above. iii. Make good any resulting damage to the land caused by the removals specified in Articles 5(i) and 45(ii) above".
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
- **Appeal 2** is made by Mr Shabir Hussain (Snooty's Pizza Bar) under section 78 of the Town and Country Planning Act 1990 against the decision of the City of Bradford Metropolitan District Council to refuse to grant planning permission.
- The application Ref 16/00951/FUL, dated 10 February 2016, was refused by a notice dated 6 April 2016.
- The development proposed is described on the application form as *"Retrospective application for replacement external extract flue"*.

Decisions

APP/W4705/C/16/3154165

1. 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 the development already carried out, namely the installation of an extractor flue to the side elevation of the building on land at 203 Great Horton Road, Bradford, BD7 1RP referred to in the notice, subject to the following condition:
 - 1) All equipment installed as part of the approved development shall be operated and maintained in accordance with the manufacturer's instructions.

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2. I take no further action on the appeal.

Preliminary matters

3. An accompanied site visit was arranged for Wednesday 1 February 2017 at 12:30. A representative of the Council attended at the arranged time, but the appellants did not attend and did not send their agent or a representative. I therefore conducted an unaccompanied site visit. I am satisfied that I was able to see the appeal development sufficiently clearly to determine the appeals.

Background

The appeal site

4. No. 203 Great Horton Road is a building of three storeys over a basement. The ground floor and basement are used as a hot food takeaway, trading as 'Snooty's Pizza Bar'. The upper floors, including the loft, contain flats. Access to the flats is at 1st floor level, via a flight of steps that runs alongside No. 205. The ground floor of Nos. 205 and 207 is also used as a hot food takeaway, trading as 'Ambala Chowdreys Restaurant'.

Relevant planning history

5. In 1993 planning permission was granted for a change of use of the ground floor of the appeal property from use class A2 (financial and professional services) to use class A5 (hot food takeaways). In 2009 planning permission was granted for the construction of a basement extension to the hot food takeaway. In October 2012 planning permission was granted retrospectively for a 'replacement external extractor duct' at the appeal property. In 2015 and 2016 planning permission was refused for a 'replacement external extract flue' (Ref Nos. 15/03449/FUL and 16/00951/FUL respectively).
6. Opposite the entrance to the flats at No.203 is another air extraction flue that serves the 'Ambala Chowdreys Restaurant'. This flue had been in position for ten years when an application was made for planning permission. Permission was granted in December 2012, partly because a fall-back position existed; namely that the development was immune from enforcement action by virtue of the passage of time and any application for a certificate of lawfulness for this development would be successful.

The appeal development

7. Two plans accompanied the 2015 and 2016 planning applications for the replacement flue; an existing plan and one entitled "Proposed replacement external flue – Retrospective".
8. The latter purports to show the flue that has been installed, but it is materially inaccurate. For example, the size and design of the unauthorised flue differ materially from that shown on the plan. Its girth is greater than the flue shown on the plan. The top section has a bulbous shape; it is not straight as shown on the plan. Furthermore, it is located partly across a window that is positioned to the right of the entrance door to No. 203, whereas on the plan it is shown further to the left, avoiding that window.
9. I deal at paragraph 23 below with the validity of the 2016 planning application and the implications for Appeal 2.

The Environmental Health Department's assessment of noise and odours

10. The appellants say that when they opened their business, the property had an internal flue, which was sited next to an adjoining flat, No. 201A¹. The external flue has replaced it.

¹ The occupier of No. 201A has written to say that the noise from the internal flue was causing distress to his son (who has a disability) and that, at his request, the appellants replaced it by the appeal development. The occupier

11. The Council's Environmental Health Technical Officer has considered the effect of this flue on the living conditions of occupiers of the flats and conducted two late evening impact assessments when the flue was in operation². He found that although the noise was audible as a steady mid-frequency hum, road traffic noise on Great Horton Road was also discernible. The sound level emanating from the flue system does not vary, but the dips and rises in background noise might give the impression that it does. He concluded that this is a mixed commercial/ residential area and that the level of noise, though subjectively audible, was not loud enough to cause a material interference with the living conditions of nearby residents. He also found cooking odours emanating from the flue were of an "insignificant level".

Appeal 1, ground (a) and the deemed application

Main issues

12. The Council raise no issue on the matter of noise and smell emissions. The main issues in this appeal arise from the reasons for issuing the notice, which are the effects of the unauthorised flue firstly, on the character and appearance of the appeal building and the street scene of Great Horton Road; and secondly, on the living conditions of occupants of the flats within the appeal building, in terms of an overbearing effect.

Planning policy

13. The starting point in my consideration of this appeal is the development plan. The site lies within a local shopping centre and a 'community priority area', as defined in the Replacement Unitary Development Plan for the Bradford District (2005) [UDP]. However, no special policies, controls or designations have been cited as applying to the appeal site or the surrounding area.
14. The UDP policies to which my attention is drawn are general policies; 'saved' policies UR3, D1 and UDP3. Their broad objectives are to ensure a high quality of design in all development proposals and to resist those that would harm the amenity of prospective or existing users and residents of adjoining land and buildings.

Reason and conclusions

Issue 1: Visual effect

15. The Council's evidence suggests that the appeal property has operated as a hot food takeaway for over twenty years, during which time there would have been a functional need for some form of air extraction flue. The Council's planning records show that permission has been granted in the past for an external flue but it is unclear as to whether this flue was ever installed. The current flue has been installed on the side elevation of the building, behind a two-storey projection that partially screens it from the public highway. Although it is a bulky addition to the building, it is set well back from the road and is not unduly intrusive from public vantage points.
16. Assessing the visual impact of a development on its surroundings entails the exercise of informed but subjective judgment. In my planning judgment the effect of the external flue on the character and appearance of the appeal building and the street scene of Great Horton Road is insufficiently acute as to justify withholding planning permission.

Issue 2: Living conditions

17. It is undoubtedly the case that the external flue could have been aligned with greater sensitivity to the arrangement of the windows on the side elevation of the building.

says that this has made a big difference to his son. No further details have been supplied. Another resident, who lives opposite the appeal building, has objected to the replacement flue citing concerns about noise and odours.

² Between 22:15 and 23:30 on 23 and 24 November 2015 [Source: Letter of 26 November 2015 from the Environmental Health Technical Officer, Brian Fairclough, to Mr M Khan at No.203 Great Horton Road, Bradford].

The fact that part of it crosses a ground floor window must affect, to some extent, the outlook from that window.

18. The Council officer's delegated report of 6 April 2016 on the planning application states that "*Whilst this may be acceptable for current occupants of the flat, policy D1 of the Replacement Unitary Development Plan requires the amenity of future occupants to be considered...*". That is the correct approach to take.
19. However, there is no clear evidence before me to suggest that the alignment of the flue would have an unacceptably overbearing effect on the living conditions of existing or future occupiers of the flat. After careful consideration I find that any such effect would be insufficiently acute as to justify withholding planning permission.

Conclusions

20. Both issues are very finely balanced, and I do not dismiss lightly the concerns that have been raised. For the reasons given, I have concluded that the appeal development is acceptable and that it would not conflict with the objectives of the development plan. I shall therefore allow Appeal 1 on ground (a). Consequently, there is no need to consider Appeal 1 on ground (g).

Conditions

21. The Council has suggested one condition that might be imposed should planning permission be granted. This condition refers to the colour of the flue. In my view this condition would fail the test of necessity³ because the finish of the flue is acceptable.
22. I shall, however, impose a condition requiring the extraction system to be operated and maintained in accordance with the manufacturer's instructions. This is reasonable and necessary in order to safeguard the living conditions of occupiers of neighbouring residential units from the possible harmful effects of noise and odour emissions that could arise through poor management of the system.

Appeal 2

Invalid application

23. Planning permission could not be granted on the basis of the application plan entitled "*Proposed replacement external flue – Retrospective*" because it is materially inaccurate. The planning application is invalid and consequently, Appeal 2 cannot be determined⁴. I shall take no further action on it.

Overall conclusions

24. I have taken account of all the matters raised in the written representations and my observations at the site. For the reasons given, Appeal 1 is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

George Mapson

INSPECTOR

³ The tests for planning conditions are set out in paragraph 206 of the National Planning Policy Framework. This paragraph explains that "*Planning conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects*".

⁴ The judgment in *Barnett v. SSCLG and East Hampshire DC* [2008] EWHC 1601 (Admin) is authority for the view that a grant of full planning permission for building operations is incomplete without the approved plans and drawings showing the detail of what has been permitted. Planning permissions run with the land and the public is entitled to rely on the approved plans and drawings. Consequently, they must be accurate. If plans and drawings contain a material inaccuracy from the outset, no planning permission can be granted in respect of them.