
Appeal Decision

Site visit made on 21 February 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 22 March 2017

Appeal Ref: APP/C1570/C/16/3158227

The Bean House, 31 Lower Street, Standstead CM24 8LN

- 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 Thomas Sowerby against an enforcement notice issued by Uttlesford District Council.
 - The enforcement notice was issued on 03 August 2016. The Council's reference is CO/009580
 - The breach of planning control alleged in the notice is failure to comply with condition No 2 of planning permission Ref UTT/14/3368/FUL granted on 14 January 2015.
 - The development to which the permission relates is the change of use from B1 (offices) to A3 (café) including internal alterations and proposed new entrance door. The condition in question is No 2 which states that: *Details of any equipment required for the extraction of cooking fumes shall be submitted to and approved in writing by the local planning authority prior to installation. The details submitted should include specifications of all fans, filters and pre-filters, outlet height and location, acoustic performance and a maintenance schedule. Thereafter, the equipment shall be implemented in accordance with the approved details.* The notice alleges that the condition has not been complied with in that "Equipment is required for the extraction of cooking fumes and the equipment installed in the position on the attached plan marked in green, was not agreed by the Council and is inadequate for this purpose in that there is a total absence of any odour abatement equipment and the equipment does not meet Defra guidance".
 - The requirements of the notice are: (a) Remove the extraction equipment in the position marked in green on the plan from The Bean House; and (b) Make good both the internal and external walls using like for like materials to match existing.
 - The period for compliance with the requirements is five months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (a)

2. The enforcement notice was served in relation to an alleged breach of condition 2 of planning permission UTT/14/3368/FUL, as described in the banner heading above. Under the terms of that condition details of any extraction system required at the premises must be submitted to, and agreed in writing by, the Local Planning Authority (the Council) prior to installation. In this case, there is no dispute that details of the current extraction system have not been
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submitted to and approved in writing by the Council and the installation of the system therefore represents a breach of condition 2.

3. Where an appeal on ground (a) is submitted in cases relating to a breach of condition, planning permission is sought to carry out the original development – in this case the change of use from B1 offices to an A3 café – without complying with the particular condition enforced. It is open to me to discharge the relevant condition and substitute any new conditions that may be required¹ and similarly to grant planning permission for the development subject to any necessary conditions². In that context, I consider that the main issue is whether condition 2 should be discharged and/or planning permission granted for the installation of the extraction system at the premises, having regard to the effect on neighbouring residents as a result of noise and odour.

Reasons

4. Although an appeal has been submitted on ground (a) the appellant does not seek to argue that the present extraction system should be retained, or that it is acceptable, having regard to the effects on neighbouring residents as a result of noise and odour. He acknowledges that the system is an interim solution pending approval of an acceptable system. Whilst alternative solutions are discussed, the appellant accepts that the erection of an external metal flue would have a negative effect on the character of the listed building and approval is not sought for any of the alternative systems that have been referred to. Having regard to the above, it seems to me that the grounds of appeal are essentially a request that more time be granted to allow the appellant to submit a further application to discharge the condition based on revised details³. That would amount to an appeal under ground (g) as opposed to ground (a) and I have considered that ground in more detail below.
5. In terms of ground (a) I consider that the condition is necessary in the interests of the living conditions of neighbouring residents. From my inspection of the site it is clear that a number of residential properties are in close proximity to the rear and side of the building and I could detect the smell of cooking odours in the vicinity of the extraction vent which is situated low down in the rear wall. Continued exposure to such odours would have the potential to cause harm to the living conditions of adjacent residents. The vent was not unduly noisy at the time of my visit but I appreciate that was only a snapshot in time. No details of the levels of noise that would be generated are before me and, in the absence of such details, I cannot conclude that the present system would be acceptable, having regard to the terms of condition 2 which requires details of acoustic performance to be submitted.
6. Therefore, I cannot conclude that the condition should be discharged and planning permission be granted for the development based on the current installation. Condition 2 meets the tests laid out at paragraph 206 of the National Planning Policy Framework and is necessary to ensure that details of any extraction system that may be installed are submitted to and agreed by the Council, having regard to the effect on the living conditions of neighbouring residents. I find that the change of use from offices to a café would not be acceptable without the condition. Accordingly, I conclude that the condition

¹ Under the provisions of s177(1)(b) and s177(4) of the Town and Country Planning Act 1990

² s177(3) and s70(1)(a) of the Act

³ As set out in the letter of clarification from Mr Thomas Sowerby, dated 28 October 2016

should not be discharged and planning permission should not be granted for the development in the absence of the condition. For those reasons, the appeal on ground (a) fails.

The Appeal on Ground (g)

7. The enforcement notice stipulates that the required work must be carried out within 5 months of the date the notice comes into effect which, in this case, would be five months from the date of my decision. It seems to me that is an adequate period for the physical works to remove the current system and to allow for further discussions with the Council on an alternative means of extraction. I am also mindful of the protracted negotiations that have already taken place and the need to ensure expediency in the enforcement of the planning system. Similarly, given that the appellant accepts that the current system is an interim measure I can see no particular reason why discussions or consideration of alternative systems should have been delayed until the outcome of the current appeal was known.
8. In view of the above, I consider that the five month period for compliance within the notice is reasonable and the appeal on ground (g) fails.

Overall Conclusion

9. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, refuse to discharge the condition and refuse to grant planning permission on the deemed application.

Chris Preston

INSPECTOR