

Appeal Decisions

Site visit made on 7 February 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 29 March 2017

Appeal A: APP/V5570/W/16/3153221

Ground Floor, 214 City Road, London EC1V 2PN

- 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 Mr Caglar Eric against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/1198/FUL, dated 11 March 2016, was refused by notice dated 20 June 2016.
 - The development proposed is described as installation of extractor fan on the roof of 214 City Road, EC1V 2PN.
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Appeal B: APP/V5570/C/16/3155745

Ground Floor, 214 City Road, London EC1V 2PN

- 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 Caglar Eric against an enforcement notice issued by the Council of the London Borough of Islington.
 - The notice was issued on 29 July 2016.
 - The breach of planning control as alleged in the notice is: unauthorised installation of an extract duct and air-conditioning unit at first floor level.
 - The requirements of the notice are:
 - I Remove the extract duct and air-condition unit and all associated cablings brackets/supports; and
 - II And repair any damage to the fabric of the building caused by taking the above steps.
 - The period for compliance with the requirements is three (3) calendar months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions

Appeal A

1. The appeal is allowed and planning permission is granted in the terms set out in the Formal Decision below.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld with minor corrections.
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Appeal A

3. The main issues are firstly, the effect of the proposal on the character and appearance of the street scene including the Moorfields Conservation Area (CA) and secondly, its effect on the living conditions of neighbouring residential units with particular reference to any loss of outlook.

Character and appearance

4. The appeal premises are a ground floor café within a six-storey building having residential flats on the upper floors. The building is an example of the several substantial commercial and institutional buildings that line City Road, having period architectural details that are a positive feature of the CA. Part of the café projects forward of the rest of the building with a flat roof on which sits an unauthorised extractor fan and air-conditioning equipment. These would be replaced with a different extractor fan. The proposal does not include an air-conditioning unit.
5. I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA. The CA Design Guidelines 2002 are a material consideration and advise that new flues in the CA should be appropriately located, modestly sized and painted a "dark colour". The Urban Design Guidance 2006 advised¹ that roof structures that are not an integral part of the building should normally be avoided, particularly if they are visible from the public realm. Such advice is also a material consideration.
6. Although contrary to one officer's view of the differences between the proposal and the existing unit, the Council's statement was clear in its view that the proposal would project above the existing parapet walls and be readily visible.
7. I saw that the unauthorised development protrudes above the parapet wall to the front elevation of the appeal site whereas the plans show a marginal increase in height of the new unit above the parapet. I consider that it would be generally unobtrusive in the street scene. Given its new position and reduced scale I do not think that painting it a recessive colour (dark may not be the best option in this scene) would materially reduce its prominence.
8. I find that the new extractor fan would be of an acceptable design including its scale and size relative to its proposed position, from which limited views would be obtainable from the public realm. It would not unacceptably detract from the street scene and would preserve the character and appearance of the CA.
9. The proposal would comply with Islington's Core Strategy 2011, CS Policy 9 in that it would preserve the coherence of the street frontage and not be unduly incongruous with the existing context of the façade of the host building. It would comply with the Council's Development Management Policies 2013, Policies DM2.1 and DM2.3 in that it would be an acceptably high quality design that preserves views that contribute to the significance of the CA.

Living Conditions

10. The proposal would be seen at close quarters from first floor front windows of the host building. The Council accepts there would be no loss of daylight or sunlight to these rooms and it seems to me that the views out are in an y

¹ A revised version, not supplied, has been published since the refusal notice but there is no change to the relevant extract supplied.

case somewhat compromised by the ground floor projection and parapet of the building. Overall I do not consider the proposal would materially detract from these views in terms of overbearing or oppressive impacts.

11. Therefore, subject to conditions which I consider necessary to protect residents from unacceptable noise and odours, I am satisfied that living conditions for these occupants would be preserved in accordance with DMP Policy DM2.1 the aims of which include the provision in new development of a good level of amenity, including consideration of noise, fumes, overshadowing and outlook.

Conditions

12. I have found that the development would be acceptable subject to certain conditions. The conditions I shall impose are based on those suggested by the Council, varied for clarity and enforceability and having regard to the tests for conditions in Paragraph 206 of the National Planning Policy Framework.
13. In addition to the standard time limit condition and specification of approved plans, a condition is necessary to properly maintain the extraction unit to protect living conditions of neighbouring occupiers. Discharge of the extracted air will be above the roof of the single storey commercial unit but due to the proposed design it would be impracticable to specify a minimum distance above the roof eaves of the building. For similar reasons of amenity I shall impose the suggested controls on noise levels of the development. To provide certainty and in the interests of nearby residents I will add a requirement to verify the effectiveness of these measures.

Conclusion on Appeal A

14. For the above reasons and taking into account all other matters raised the appeal is allowed.

Appeal B

The appeal on ground (f)

15. The issue under this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The notice requires complete removal of the extract duct and air-conditioning unit and thus indicates that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act.
16. The appellant points out that it would be possible to make improvements to the current structure without having to fully remove it. He adds that if required to remove it altogether it would mean closing the business. That may be so but it is not explained how if at all the unauthorised development could or would be adapted or altered to comply with the planning permission which I propose to grant in respect of Appeal A. No lesser steps are proposed that would remedy the breach of planning control that has occurred. It is therefore necessary and not excessive to require the removal of the extract duct and air-conditioning unit as they exist. The appeal on this ground therefore fails.

The appeal on ground (g)

17. The appellant requests an extension of the period for compliance from 3 to 6 months, to minimise the effect on his business and because the costs of de-

installing the flue would be onerous. However the works involved are not major in nature. I see no good reason why this may not be achieved within the compliance period of 3 months which is reasonable in the circumstances.

18. The appeal on ground (g) therefore fails.

Overall Conclusion on Appeal B

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected.

Formal Decisions

Appeal A

20. The appeal is allowed and planning permission is granted for installation of extractor fan on the roof of 214 City Road, EC1V 2PN in accordance with the application Ref P2016/1198/FUL, dated 11 March 2016, and subject to the following conditions:

- 1) The development hereby permitted shall be begun not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following approved documents and plans:

Elevation A - Existing Front Elevation; Elevation A - Proposed Front Elevation A; Elevation B - Proposed Rear Elevation; Elevation B - Existing Rear Elevation; Section C - Existing Section; Section C - Proposed Section; Plan - Existing Roof Plan; Plan - Proposed Roof Plan; OS Map; and specification sheets showing, in respect of the proposed extraction/ventilation system to be installed: details of fan motor, air filters, and anti-vibration mounts.

- 3) The flue shall be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with 0.1 second resistance time) or alternatively fine filtration followed by counteractant/neutralising system to achieve the same level as above. The filter systems of the approved flue / extraction unit shall be regularly maintained and cleaned; and any filters and parts requiring cleaning or replacement shall be easily accessible.
- 4) The design and installation of the development hereby approved shall be such that when operating, the cumulative noise level LAeq Tr arising from the plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg. The measurement and/or prediction of the noise shall be carried out in accordance with the methodology contained within BS 4142: 2014. Before the flue/extraction unit is operational a verification report that demonstrates compliance with this condition, carried out by an appropriately experienced and competent person, must be submitted to and approved in writing by the local planning authority.

Appeal B

21. I direct that that Requirement II of the enforcement notice be corrected by deleting "air-condition" and replacing it with "air-conditioning"; and by deleting

“And”. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR