
Appeal Decision

Site visit made on 30 May 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 20 June 2017

Appeal Ref: APP/X5990/C/16/3159525

Domino's Pizza, 89 Charlwood Street, London SW1V 4PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 by Hamandi Investments Limited, trading as Domino's Pizza, against an enforcement notice (ref: MS/30101937) issued by Westminster City Council on 22 August 2016.
 - The breach of planning control alleged in the notice is "the installation of replacement internal extract and supply air systems with external grille and air conditioning and refrigeration condenser units with associated enclosures and associated fixtures and fittings to the rear elevation and garden of the Property".
 - The requirements of the notice are as follows: -
 - "a) Remove the plant equipment housing on the rear elevation at ground floor level including the removal of plant and extract equipment within this housing (outlined in red in photograph A);
 - b) Remove the air conditioning and refrigeration condenser units with associated enclosures (outlined in red on Photograph B) and remove all associated cabling, fixtures and fittings from the rear elevation of the property.
 - c) Remedy any damage caused to the property by the installation or removal of the works cited in parts a) and b) above"
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g).
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for development at Domino's Pizza, 89 Charlwood Street, London SW1V 4PB consisting of the installation of replacement internal extract and supply-air systems with an external grille and air-conditioning and refrigeration condenser units with associated enclosures and associated fixtures and fittings to the rear elevation and in the rear yard of the property, subject to the following conditions: -
 1. If within one month of the date of this decision a scheme for the control of noise, odours and vibration caused by the operation of the installation has not been submitted in writing to the local planning authority for their written approval, or if the approved scheme has not been carried out as approved within three months of the local planning authority's written approval, the use of the installation shall cease until the approved scheme has been carried out as approved. The scheme carried out as
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approved shall be retained and the installation shall be operated in accordance with the approved scheme.

2. If within one month of the date of this decision a scheme for the colouring of the grille unit has not been submitted in writing to the local planning authority for their written approval, or if the approved scheme has not been carried out as approved within three months of the local planning authority's written approval, the grille unit shall be removed. The scheme carried out as approved shall be retained.

Reasons for the decision

Ground (a)

2. The notice relates to two cabinets in the rear yard (there is no "garden" here) of the Domino's Pizza and to a grille unit above them in what used to be a window opening in the building's rear elevation. The building has been identified by the Council as an 'Unlisted Building of Merit' within the Pimlico Conservation Area. The Council have acknowledged the importance of protecting commercial uses and do not seek to close the business by issuing the notice.
3. The main issues in deciding whether planning permission should be given for the cabinets and the grille unit concern (a) their effect on the character and appearance of the building and its surroundings, paying special attention to the desirability of preserving or enhancing the character or appearance of the Pimlico Conservation Area, and (b) the effect that their use may have on the amenities of nearby residents because of noise, odours or vibration.

The effect on the character and appearance of the building and its surroundings

4. The Pimlico Conservation Area features mid-19th century development by Thomas Cubitt, which in this part is characterised by terraces with attractive road frontages. The Domino's Pizza is in a terrace that has commercial units on the ground floor and residential accommodation on the upper floors. The commercial units have an unexceptional appearance and the building's designation as an 'Unlisted Building of Merit' appears to derive from the architectural features on the upper floors of its front elevation.
5. The Council state that a hot food takeaway business has operated from here since 1990 and they accept that the cabinets and the grille unit have replaced an earlier installation. The information available to me indicates that the previous installation had units attached to the rear of the building and in parts of the same window opening.
6. The cabinets that have now been installed are freestanding and larger than the previous units, but they nevertheless have a low profile, below the level of the walls surrounding the rear yard. Objects of this size can be expected to be placed in the rear yards of these commercial units or, for that matter, in the nearby gardens. The grille unit makes full use of the window opening and is more noticeable than the previous installation, but it is part of a system that has been designed to avoid the need for external ducting, which could have been an intrusive feature at the rear of the building. The appearance of the grille unit would be improved if it were coloured more sympathetically.

7. In the circumstances I have described, the cabinets and the grille unit comply with the Westminster Unitary Development Plan ("UDP"), Policy DES 5, by being confined to the rear of the building and by not dominating the building visually, and the installation as a whole complies with the policy by being enclosed within the external building envelope as far as is reasonably practicable. The appearance of the building and the prospect of it from other properties would be improved if the grille unit were coloured more sympathetically, but they have not been significantly altered in other respects. The character and appearance of the Pimlico Conservation Area and the significant architectural features of the building itself have not been harmed.

The effect on the amenities of nearby residents because of noise, odours or vibration

8. The nearest residents are those on the upper floors of the terrace and those in Alderney Street and Winchester Street whose rear elevations and gardens adjoin the rear of the terrace. If the installation as a whole has not been suitably designed, assembled and operated, these residents are likely to have been affected by noise and odours, and those living on the upper floors could have been affected by vibration as well.
9. It is common ground that problems have occurred. The appellants have acknowledged that an odour issue arose as a result of an operational failing and that they have had difficulty in satisfying the Council that noise levels have been acceptable. The Council have received complaints from residents and have found proposals submitted by the appellants either to be insufficiently informative or to be unacceptable. Residents have complained during the course of the appeal about noise, odours and vibration.
10. UDP Policies ENV 5, 6 and 7 are applicable to these concerns. They indicate amongst other matters that the installation should be carefully designed and sited and residents adequately protected. It is pointed out that planning conditions will be imposed to achieve these objectives when planning permissions are granted.
11. The information supplied to me indicates that the appellants have not so far been able to satisfy the Council that the installation complies with Policies ENV 5, 6 and 7. I understand that consultations are ongoing. The Council have stated that "the principle of plant equipment in this location is not unacceptable" and I have found that the equipment that has been installed does not have a harmful impact on the character and appearance of the building and its surroundings or the Conservation Area. The installation appears to consist of conventional components that should be capable of being operated so as to comply with customary environmental standards. However, at present its operation is giving rise to amenity concerns that should be resolved as soon as possible.
12. In my opinion, the appropriate outcome as far as this appeal is concerned is to grant planning permission for the installation, subject to planning conditions requiring the amenity concerns to be resolved within a defined timescale, failing which its use will have to cease. Thereafter it will be required to be operated as approved by the Council. The conditions will also require the colouring of the grille unit to be improved.

13. I have therefore decided to grant planning permission in the terms set out in paragraph 1 above. The reasons for the planning conditions are: 1. to protect the amenities of residents and 2. to improve the appearance of the grille unit. The appeal has succeeded on ground (a) to this extent.
14. In reaching my conclusions I have taken into account the other planning decisions referred to by the parties. None of them relates to circumstances that are comparable in all respects to the circumstances arising in this appeal and my decision is not inconsistent with the principles expounded in them.

Grounds (f) and (g)

15. Since the appeal has succeeded on ground (a), the notice has been quashed. Grounds (f) and (g) no longer fall to be considered.

D.A.Hainsworth

INSPECTOR