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## Appeal Decision

Site visit made on 22 July 2019

**by Anthony J Wharton BArch RIBA RIASI**

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

**Decision date: 2 August 2019**

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**Appeal Ref: APP/P4605/F/18/3209630**

**Enfield House, Enfield Road, Birmingham B15 1QA**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Jabar Mohiyaddin Latif against a listed building enforcement notice (LBEN) issued by Birmingham City Council (the LPA).
  - The enforcement notice, numbered 2017/0515/ENF, was issued on 25 July 2018.
  - The contravention of listed building control alleged in the notice is:  
The installation of an extract flue in the approximate position shown marked green on the plan attached to the notice.
  - The requirements of the notice are as follows:
    - (i) Dismantle the extraction flue and remove all associated parts from the premises.
    - (ii) Repair any damage caused to the listed building by the dismantling the extract flue.
  - The period for compliance with the requirements is 3 months.
  - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).
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### Decision

1. The appeal is dismissed. See formal decision below.

### Background information and relevant policy

2. The appeal property (Enfield House), is located on Enfield Road to the east of the Five Way roundabout and to the south-west of Islington Row Middleway. It was listed in Grade II in 1976. It was the former '*Edgbaston Vestry Hall*' and was built in 1856 in a '*Norman*' style to a design by F W Fiddian. It is an imposing and prominent red-brick building with stone dressings, built on a blue-brick battered plinth. It is split into 9 bays which are divided by narrow pilasters in a varying rhythm of broad and narrow sections. The main entrance is on the north elevation and it is adjacent to the A4540, which forms part of the part of the inner ring road.

3. The land uses in the immediate surrounding area are commercial and residential. The cross-city railway line and the Five Ways railway station lie immediately to the east and the building lies within the Edgbaston Conservation Area (ECA). The building had previously been in use as a Use Class A1 Printshop but is currently in use as a Class A3 restaurant. The site is long and narrow and bounds the railway line. To the north-west there are two housing developments known as Richmond Court and Hampton Court.

4. The planning history indicates that Enfield House was granted a change of use (COU) from Use Class A1 (retail) to a mixed use of Use Classes A1, A2, A3, B1(a), B1(b), D1 (excluding Religious Institutions and Places of Worship) and D2. The approval was subject to conditions which, amongst other things, indicated that no development should take place for the Class A3 use until details were submitted which

included details of extract ventilation and odour control had been submitted for approval in writing by the LPA (Condition No 3). A further condition No 4 indicated that the consent for the flue was not granted and that a separate consent would be required for those works.

5. On 5 July 2018 Listed Building Consent (LBC) was refused for the retention of the extract flue on the basis that by virtue of its position, form and materials it had adversely affected the character and appearance of the listed building and was, therefore, contrary to policies PG3 and TP12 of the Birmingham UDP (BUDP). At the same time and for the same reasons planning permission was also refused for the retention of the flue. On 25 July 2018 the LBEN (2017/0515/ENF0) was issued.

6. The flue as installed is similar but not identical to the flue shown in plans for applications 2017/08519/PA for planning permission (PP) and 2017/08564/PA for Listed Building Consent (LBC). It has been installed on the east elevation through the adjacent window to that shown on the plans. The Council also indicates that the cowl appears to be a different shape to that shown on the submitted drawings.

7. The detailed Heritage Statement (HS) submitted with the applications refers to the building being erected in 1855 as the Vestry Hall and being converted to a railway station in 1885. Following the closure of Five Ways station in 1944 the building was used commercially from 1948.

## **Reasons**

8. The main issues in this appeal relate to the effect that the unauthorised flue has had, firstly, on the character and integrity of the listed building; on its setting and on its special architectural and historic features and, secondly, its effect on the character and appearance of the Edgbaston Conservation Area (ECA).

9. The most relevant development plan policies are Policies PG3 (Place Making) and TP12 (Historic Environment) of the Birmingham Development Plan (BDP). Because the building is listed in Grade II and within the ECA, I have had special regard and paid special attention to sections 16(2) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA). The National Planning Policy Framework 2019 (NPPF) is a major material consideration. In reaching my decision I have had regard, in particular, to section 16 (Conserving and enhancing the historic environment).

### *The effect on the character, integrity, setting and features of the listed building*

10. Having seen the flue from both near and distant viewpoints, I share the Council's concerns about its visual impact on the east elevation of this fine listed building. Although the eastern elevation is not as decorative as that to the west, the red brickwork, dark slated roof, dentilled brick eaves and round-headed windows are all distinct and notable features. The metal flue crudely projects through the top section of one of the windows and, in doing so, detracts markedly from the character and integrity of the listed building.

11. When viewed from the east platform of the station it is perceived as an obtrusive and alien feature on the face of the building. It is constructed of shiny modern metal material which contrasts most negatively with the historic brickwork and slate materials of the original building. Due to its bulk and height and the way in which it breaks the eaves line of the building it is conspicuously and visually harmful to the character of the building.

12. In my view it also ruins its historic setting and has detrimentally affected the special architectural and historic features of this particular elevation. It has ruined the

form and scale of one of the window openings; cut across the fine dentilled brickwork eaves detailing and projected well above the eaves level to be seen against the slated roof. Overall it has caused harm to these special features of the listed building.

13. I agree with the City Conservation Officer that it has caused harm to the significance of the building as a heritage asset and that it fails to accord with Policies PG3 and TP12 of the BDP. These aim to ensure that any new works are sensitive to, and do not harm such assets. I acknowledge that the harm is less than substantial (see NPPF paragraph 196) but the works bring no public benefits which can outweigh the harm caused.

14. As well as being contrary to the BDP policies, I consider that the flue is contrary to the policies set out in sections 12 and 16 of the NPPF. I have already referred to the harm caused in relation to the requirements that development should conserve and enhance the historic environment. In addition general design policies set out in section 12 are also relevant. In particular at paragraph 130 it is clearly stated that permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. The flue as fitted represents extremely poor design which has been resisted by the Council at the various stages and, irrespective of the claim that the works are '*easily reversible*', I find no justification to grant LBC at this appeal stage.

15. In harming the listed building, its setting and its features of special architectural and historic interest, it follows that it neither preserves nor enhances the character and appearance of the conservation area. The appeal fails, therefore on ground (e) and LBC is not granted for the flue.

### **Other Matters**

16. In reaching my decision I have taken into account all of the other matters raised by the Council and by and on behalf of the appellant. These include the full planning history; the initial submissions; the detailed statement and reports; the photographic evidence and the Heritage Statement (HS).

17. With regard to the HS, I completely disagree with findings of those who assessed the impact of the flue on the listed building. Whilst accepting that the small fixings might have had a negligible impact on the external fabric, for the reasons set out above, I cannot comprehend how an overall conclusion could be reached that there has been '*a limited change to the appearance of the listed building*' and that it has resulted in a '*negligible physical impact*'.

18. In conclusion none of the above matters alters my findings with regard to the main issues and nor is any other factor of such significance so as to change my decision.

### **Formal Decision**

19. The appeal is dismissed and the Listed Building Enforcement Notice is upheld. Listed Building consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990, at Enfield House, Enfield Road, Birmingham B15 1QA.

*Anthony J Wharton*

Inspector