

Appeal Decision

Site visit made on 21 August 2019

by John Whalley

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

Decision date: 28 August 2019

Appeal ref: APP/X5210/C/18/3215898

College House, 1-8 New College Parade, Finchley Road, London NW3 5ES

- The appeal is made by Standard Securities Limited under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Camden Council.
- The notice was issued on 5 October 2018; reference No. EN17/1215.
- The breach of planning control was: Without planning permission: The erection of flues and associated plant equipment sited at the rear elevation and flat roof of the property.
- The requirements of the notice are Either:
 1. Remove all the flues, plant equipment and any associated fixture and fittings from the rear elevation and roof of the property cited within the area outlined in red on the site plan at appendix A
 - Or
 2. Implement the planning permission reference 2015/3762/P and remove all the other flues, plant equipment and associated fixtures and fittings from the rear elevation and flat roof of the property which are not detailed on the approved plan sited within the area outlined in red shown on the site plan at appendix AAnd in addition to requirements of 1 or 2 above also:
 3. Remove from the site or constitute materials resulting from the above works.
 4. Repair all damage to the building resulting from the above works.
- The period for compliance with the requirements is 3 months.
- The appeal was made on ground (c).

Summary of decision: The appeal is dismissed and the enforcement notice upheld

Appeal development

1. The appeal is made against an enforcement notice alleging the unlawful erection of fume extraction flues and associated plant fixed to the rear wall and roof of the building at Nos. 5 – 7 New College Parade, Finchley Road, London NW3 5ES. The equipment acts for 2 restaurants, the Guglee Indian restaurant and the Duck Duck Goose Cantonese restaurant near the southern end of Finchley Road.

The appeal on ground (c)

2. An appeal on ground (c) says there has not been a breach of planning control. The Appellants said a planning application for a replacement flue system at the appeal property following a fire had been submitted in July 2015. The Council had asked for more information. That was supplied in January 2016, following completion of the flue works. Silencers were added in July 2016. The undecided planning application was chased up. A Council officer inspected the site on 18 October 2016. Planning permission for the retention of ducting and new mechanical plant and ventilation equipment at the appeal property was issued on 19 October 2016; Council application ref: 2015/3762/P. The Appellants contended that planning permission had therefore been granted for the installation as built.
3. In serving the appeal enforcement notice, the Council said what had been built was not that approved by the 2015/3762/P permission. They said the flues were significantly taller. An extra flue had been installed later.
4. If, as the Appellants said, the pair of curved top flues that rise well above the New College Parade buildings and the associated silencer equipment were installed and completed when the Council officer visited, a misunderstanding seems to have followed. The Appellants might reasonably have assumed the Council were content, especially as planning permission 2015/3762/P, which describes the proposal as "*Retention of ducting and new mechanical plant and ventilation equipment at the appeal property*" came immediately after the officer visit. But the installed fume extraction works were not those shown on the 2015/3762/P drawings. It was not demonstrated that differences between the works as carried out and as presented on the approved drawings were inconsequential. The 2015/3762/P planning permission cannot grant approval for materially or significantly different works.
5. Even if the Council officer was content after the 18 October 2016 visit, a bid for estoppel by representation is not appropriate in the context of planning control. If a binding determination was needed, a formal application must be made under s.191 or s.192 of the Act. The decision in *R v East Sussex CC ex parte Reprotech (Pebsham) Ltd* (HOL 28.2.02) is authority for that position.
6. The Appellants said the circular section flue fixed alongside the 2 main square section flues was not part of the current appeal. But the Council pointed out that the notice encompassed: "... *all the other flues and equipment that have been installed without the benefit of any planning consent, which are also subject to this appeal ...*". The additional flue works are significant. They are outwith the 2015/3762/P planning permission and are not excluded from the ambit of the appeal enforcement notice. It was not shown that the additional flue did not require planning permission. The appeal on ground (c) fails.

FORMAL DECISION

7. The appeal is dismissed and the enforcement notice is upheld.

John Whalley

INSPECTOR