
Appeal Decision

Site visit made on 30 July 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 09 September 2019

Appeal Ref: APP/J1535/C/18/3209178

Land at 54 Sun Street, Waltham Abbey EN9 1EJ

- 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 Keith Polworth against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice, ref. ENF/0141/18, was issued on 20 July 2018.
- The breach of planning control as alleged in the notice is without planning permission and without prior approval (through the discharging of a condition) by the Council, the unauthorised installation of extraction equipment to the rear of the building on the land, in breach of Condition 4 of planning permission ref. EPF/1145/17 which states:

Condition 4:

Equipment shall be installed to suppress and disperse cooking/food preparation fumes and smell to a minimum. The equipment shall be effectively operated and maintained for as long as the use continues. Details of the equipment shall be submitted to and approved by the Local Planning Authority prior to the commencement of the use.

Reason:

To ensure that unsatisfactory cooking odours outside the premises are minimised in the interests of the amenity of the area and occupiers of nearby properties, in accordance with policy RP5A of the adopted Local Plan and Alterations.

- The requirements of the notice are to:
Remove from the building the external extraction equipment which is currently located to the rear of the building.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
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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.

Preliminary matters

2. The appeal site is within the Waltham Abbey Conservation Area, I have therefore paid special attention to the desirability of preserving or enhancing the character and appearance of that area as required by s.72(1) of the Planning (Listed buildings and Conservation Areas) Act 1990 as amended.

Background matters

3. The appeal site lies at the eastern end of Sun Street, on the corner of Darby Drive and more or less opposite the junction with Quaker Lane. The appeal property is a relatively modern building with red brick and white rendered walls, a slate roof, and with prominent gables facing westwards onto Darby Drive. On the northern side of the building is a small car park. The extraction equipment subject of the enforcement notice is attached to this northern elevation.

The appeal on ground (a) and the deemed planning application

4. This ground is that planning permission should be granted for the matters stated in the enforcement notice. The appellant has put in a scheme that he claims would conceal the extract equipment.
5. From my inspection of the appeal site and surroundings, and all that I have read I consider the main issue to be the effect of the extraction equipment installation on the character and appearance of the Conservation Area.
6. The Conservation Area covers an extensive area around the Abbey Church itself, with expanses of parkland and open space to the north, and the densely developed urban area around the Sun Street and Quaker Lane to the south. Development along Sun Street is mainly commercial/retail, with a market place towards the western end. Buildings are of traditional construction, built in a variety of materials and styles, and of varying height. Constructional materials typically include stock brick or painted render walls, half-timbering, and red tiled roofs. A significant number of the buildings are statutorily listed or locally listed. Overall, this part of the Conservation Area has the character of a lively and attractive urban high street.
7. No. 54 Sun Street is an attractive relatively recent building that has clearly been carefully designed to reflect the varied forms and materials of other buildings nearby. The extraction equipment on its northern elevation comprises substantial black painted ductwork, which emerges from the building at high level on the ground floor, crosses horizontally towards the street, rises up to the first-floor eaves, and then cranks around the eaves to terminate about half way up the roof slope of the northernmost gable.
8. The installation is a highly conspicuous feature when approaching Sun Street along Darby Drive, and in my opinion is an incongruous and discordant element in the context of the generally well-designed host building, and of the traditional forms and materials of buildings within the Conservation Area. I consider the extraction equipment causes significant harm to the character and appearance of the Waltham Abbey Conservation Area. The development does not accord with the development plan, particularly in terms of Policies HC6 and HC7 of the Epping Forest District Local Plan of 1998 with Alterations of 2006. These seek to prevent development that would harm the character, appearance or setting of conservation areas, and to ensure all development and materials are of particularly high standard and are sympathetic to the character and appearance of those areas.
9. Paragraph 196 of the National Planning Policy Framework (NPPF) advises that where a development would cause less than substantial harm to the significance of a designated heritage asset – such as a conservation area – this

harm should be weighed against the public benefits of the proposal. In this case the harm caused to the Conservation Area must be regarded as less than substantial. I consider the development does provide some degree of public benefit by reason of controlling smells and fumes dispersed into the public realm. However, it appears to me that the appellant has also acted for his own benefit in bypassing the requirement to submit details of the installation for the Council's approval. Overall, I consider the harm caused to conservation area interests outweighs the public benefits of the scheme. The appeal on ground (a) therefore fails.

Other matters

10. The appellant suggests that the installation might be partially screened by provision of an aluminium sheet enclosure to the horizontal section of the ductwork that would be powder-coated in an oxide red colour. If the appellant wishes to pursue this possible solution it cannot be done by means of a ground (a) enforcement appeal where the deemed application is strictly for approval of the matters stated in the notice. Should formal approval be sought, it should be by means of a planning application for the proposed screening. However, I understand this has been discussed with the Council, whose opinion is that it would not be accepted on account of the colour and that most of the system would remain visible.

Conclusions

11. For the reasons given above and having regard to all other matters raised I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR