



Appeal Decision

Site visit made on 27 August 2019

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2019

Appeal Ref: APP/N4720/W/19/3231220

74 Otley Old Road, Cookridge, Leeds LS16 6LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Salar Eftikhary against the decision of Leeds City Council.
 - The application Ref 19/00045/FU, dated 18 December 2018, was approved on 26 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is application for ventilation flue to rear.
 - The conditions in dispute are Nos 1, 2 and 3 which state that:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.
 - 2) The external cladding materials for the flue shall match the existing buildings.
 - 3) The existing flue shall be clad in line with the approved plans within two months of the date of this decision and thereafter retained and maintained.
 - The reasons given for the conditions are:
 - 1) For avoidance of doubt and in the interests of proper planning.
 - 2) In the interests of visual amenity
 - 3) In the interests of visual amenity
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the appeal process, on the 11 September, the Council have formally adopted the Core Strategy Selective Review. Both parties were given the opportunity to comment on the revised Local Plan document.
3. The planning application was modified during the planning process, in order to remove reference to decking as part of the proposals. Therefore, I have utilised the Council's description of development in the banner heading above.
4. However, the Council's description was actually 'retrospective application for ventilation flue to the rear'. Section 55 of the Town & Country Planning Act 1990 (as amended) defines "development" as including "the making of any material change in the use of any building or other land". I have not therefore used the term "retrospective" in the banner heading above as it is not an act of development.

Background and Main Issue

5. Planning permission had previously been granted for a ventilation flue at the rear of the property to serve the commercial premises. The ventilation flue had already been installed before planning permission was granted. The appeal

proposal seeks approval to retain the development without complying with the conditions attached to the planning approval.

6. The main issue in this case is whether the disputed conditions are reasonable and necessary, having regard to the character of the area and the amenity of neighbouring residents.

Reasons

7. Paragraph 55 of the National Planning Policy Framework (the Framework) states that 'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.' The Planning Practice Guidance (PPG) states that the 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.
8. In accordance with the PPG a key question in respect of whether a condition is necessary, is that it must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms.
9. The appeal property is commercial in nature with residential accommodation above and is one of a number of commercial premises in a block. From my site visit, it is apparent that the row of properties are effectively three storeys at the rear, which appears to operate as both a service yard for the commercial premises, and access/parking for a number of residential flats above the commercial units. Adjacent to the rear of the appeal premises is an external metal staircase that serves one of the flats and is effectively two storeys in height.
10. Other than the residential flats, the closest property is located on New Adel Gardens, and is largely screened by high vegetation and domestic outbuildings and not materially affected by the appeal proposals.
11. The flue cannot be seen from the front of the commercial premises and terminates just above the eaves at the rear. However, it is in close proximity to a window of the residential flat above the appeal premises. The window was not obscurely glazed, but I could not confirm whether it served a habitable room. The flue, as installed has an industrial appearance, especially when seen in the context of the residential flats at the rear of the commercial block and as result, in its current form, causes harm to the character and appearance of the area by its appearance.
12. The appellant states that the cladding works and painting included with the conditions were agreed by his agent at planning application stage without his consent. However, this does not give the appellant the right to ignore the imposed conditions.
13. I also note from the statement of the appellant that as the flue is located to the rear of the premises, it does not cause harm to the character and appearance of the block, and that the rear of the property is servicing for the commercial premises, and not residential in nature. Nonetheless, this does not constitute a justifiable reason for ignoring the materials set out as part of the condition. In short, a perfectly acceptable scheme has been approved, which would be far more appropriate in terms of the character and appearance of the area.

14. As a result, I find that no public benefits have been demonstrated that would outweigh the harm and there is no clear and convincing justification for the removal of the conditions.
15. I therefore conclude that Conditions 1, 2 and 3 are reasonable and necessary in their current form in order to protect the character and appearance of the area. There would be conflict with policy P10 of the Leeds City Council Core Strategy (2014) and saved policy BD6 of the Leeds Unitary Development Plan (2006), which collectively state that proposals should respect the detailing and materials of the original building, and protect the visual, residential and general amenity of the area through high quality design.
16. The conditions are also drafted in a precise manner and are enforceable. The conditions were reasonably imposed and are consistent in respect of guidance in the Framework.

Conclusion

17. For the above reasons, and having regard to all other matters raised, I dismiss the appeal.

Paul Cooper

INSPECTOR