



Appeal Decision

Site visit made on 12 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 12 November 2019

Appeal Ref: APP/N5090/C/19/3222889

Blue Pacific, 757 Finchley Road, London NW11 8DL

- 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 Mr John Cronin against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 6 February 2019.
 - The breach of planning control as alleged in the notice is: The construction of additional Flue (as shown in photo) to the rear of the property without planning permission.
 - The requirements of the notice are to:
 1. Permanently remove the 1no. new Flue and all associated new fittings and fixtures from the rear of the site.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is 2 Months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. It is directed that enforcement notice be corrected by, in the matters which appear to constitute the breach of planning control, deleting the wording and replacing it with the following:

“the installation of an additional flue and air intake valve (as shown in photo) to the rear of the property without planning permission.”
2. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

3. Although the enforcement notice refers only to the construction of an additional flue both main parties make mention of an air intake valve having been installed. As the enforcement notice’s requirements relate to all associated new fittings and fixtures I will correct the notice to include reference to the air intake valve. In the circumstances I am satisfied that the correction can be made without injustice caused to either party.

Background

4. The ground floor of No 757 Finchley Road is in use as a restaurant and, to facilitate this operation, a stainless steel flue chimney has been recently erected at the rear of the building, positioned immediately behind a flue previously installed. The latter was also erected without the benefit of planning permission and this enjoys immunity from planning enforcement action due to the passage of time. Both flues are of similar dimension, each to a significant height and diameter, rising to just below the roof of the property's dormer extension.
5. The Council determined it expedient to issue the notice due to the flue's size and siting, considering it to cause harm to the character and appearance of the building and its surroundings and, in addition, a consequent loss of light and outlook to the first floor residential flat due to the apparatus being positioned close to the first floor flat's rear window.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

6. The two main issues are:
 - 1) the development's effect on the character and appearance of the host building and its surrounding area; and
 - 2) the development's effect on the living conditions of the first floor flat's occupiers, with particular regard to outlook and light entry.

Character and appearance

7. The appellant comments that the flue should be seen in the context of the earlier flue installed and also the adjoining property's first floor rear extension, which projects outwards close to the development. Given this, he considers that the new flue is not visually intrusive and is an acceptable addition to the building. I disagree as, when taking all the apparatus into account, the extent and height of the flue and its visual impact represents an unduly prominent feature, at odds with local character.
8. Whether or not the other flue present enjoys immunity from remedial action under the Planning Acts is immaterial to my assessment. The fact it is in situ, permitted or otherwise, means it must be considered as a factor in the overall cumulative impact of the extraction equipment.
9. The appellant also argues that, as the equipment cannot be seen from Finchley Road, the street scene is not unduly affected. Nonetheless, whilst the Finchley Road street scene is unaffected the installations, due to their size, are readily visible from Madoc Close to the rear and also from the rear windows of a number of residential properties which have angled viewpoints towards the rear of the Finchley Road terrace of which the appeal property forms part. In this context the new flue compounds the situation.
10. The appellant considers that the air intake valve is of a size to provide an appropriate level of air conditioning and comfort for the restaurant's customers and staff. This might be the case, although I have seen no direct evidence to suggest that the equipment installed as a whole is the only feasible option

available to facilitate the restaurant's operation. Therefore, I consider that this installation similarly compounds matters.

11. The appellant comments that the equipment could be cladded with a suitable screen so as to lessen its impact. On this point he considers that such a measure could be left to the imposition of a suitably worded planning condition. I do not share this view as the masking of the equipment would add further bulk to the development and would thereby not alleviate the harm caused by what is a visually intrusive form of development which significantly detracts from the character of the building and its surroundings.
12. I therefore conclude that the development is harmful to the character and appearance of the host building and its surrounding area and materially conflicts with the aims and requirements of policy DM01 of Barnet's Local Plan Development Management Policies Development Plan Document (DPD) which, amongst other things, requires that development should have regard to its surroundings, and be appropriate in terms of height and scale.

Living conditions

13. The appellant considers that the flue is sufficiently distanced from the property's rear windows so as not to be overbearing. At my site visit I noticed otherwise. The flue chimney at issue is positioned close to the first and second floor rear facing windows at the appeal property. Although the Council has provided no direct evidence to show that the development has resulted in a loss of light from such proximity I am convinced that the occupiers of the first floor flat have had their outlook adversely affected by the installation of the additional flue chimney. Again, the cumulative effect comes into play here.
14. The Council's representations indicate that its Environmental Health team has witnessed a Statutory Nuisance from its operation. However, this was not expounded further and no details of any Statutory Nuisance, and how caused, has been advanced by the Council. As such, I afford this matter little weight.
15. On the basis of the interference with outlook I conclude that the development is harmful to the living conditions of the occupiers of the first floor flat, contrary to the amenity objectives of DPD policy DM01.

Other considerations

16. The appellant refers to the presumption in favour of sustainable development, but no details nor any convincing justification have been provided as to how the proposal satisfies this particular objective of the National Planning Policy Framework. The appellant also refers to policies from the Council's Core Strategy document in an attempt to support his case. However, both policies CS5 and CS6 thereof require that development has regard to local character. Accordingly, whilst the latter policy serves to promote the borough's town centres, the effect of new development on local character is a clear factor to take into consideration when assessing proposals within.

The Appeal on Ground (f)

17. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In

this case it would appear from the requirements of the notice that, notwithstanding the considered effect on the occupiers of the first floor flat, its primary purpose is to remedy the breach by restoring the property to its condition prior to the current breach.

18. Under ground (a) I have found that planning permission should not be granted for the installation of the additional flue, and that cladding to screen the chimney flue would not sufficiently mitigate the impact of the development. There is no articulated alternative scheme before me that might potentially remedy the breach and, given the circumstances, I find that it is not excessive to require the removal of the unauthorised operational development which constitutes the breach of planning control. Accordingly, the appeal on ground (f) fails.

Overall Conclusion

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and refuse to grant planning permission on the deemed application.

Timothy C King

INSPECTOR