
Appeal Decision

Site visit made on 18 September 2019

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/N5660/W/19/3226113

9 Killyon Terrace, London SW8 2XR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Emil Ratkoceri against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/05227/FUL, dated 6 December 2018, was refused by notice dated 31 January 2019.
 - The development proposed is loft conversion to top floor flat.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether or not the proposed development would provide acceptable living conditions for occupiers, with particular regard to noise and odour.

Reasons

3. The appeal site is a second floor flat within a three-storey, mid-terrace property, with commercial premises at lower ground floor level. A substantial external flue extends up the rear of the building, discharging cooking fumes from a hot food takeaway directly towards the rear roof plane. The proposal would result in the installation of a mansard roof, with the flue discharge shown as 985mm from the proposed window and within 500mm of the roof plane.
4. The appellant's noise assessment states that when the extraction system is in operation, the sound levels rise from 51 to 73 dB. The assessment consequently concludes that, without mitigation, the proposal may have a significant adverse effect on health and quality of life.
5. Accordingly, a number of mitigations are proposed to reduce the impact of noise on the development, the principal measure to avoid noise being the installation of an in-line attenuator on the flue. However, this could not be implemented as part of the current appeal, given what are understood to be different ownerships of the flat and commercial premises. Section 4.1.5 of the noise assessment describes this mitigation as 'necessary'. I give this evidence significant weight, given my observations on site of the closeness of the flue to the proposed window and the likelihood that the noise will be more persistent in the evenings and weekends when the hot food takeaway is busy.

6. Subsequent comments in the same section of the noise assessment then appear to downgrade that necessity, but do not go so far as to say this mitigation is optional. Overall, in the absence of any assurance that alternative measures such as fixed windows, acoustic glazing and insulation are in themselves sufficient, I find there is a high potential for harm to be caused to the future occupants by way of noise.
7. Fixed windows are proposed to eliminate odour. However, the proximity of the proposed roof to the discharging flue, allied with the invasive nature of odours which can penetrate non-airtight constructions, put the occupiers of the flat at significant risk of penetrating and unpleasant odours. Based on the limited evidence before me, and in light of the objection from the Council's Food, Health and Safety team, I am not satisfied that fixed windows alone would adequately mitigate this risk.
8. The appellant has suggested that these mitigations could be dealt with by conditions. However, the uncertainty about the precise effects of the mitigation measures, allied with the potentially significant effects of the proposal, are such that a precautionary approach is necessary in this case. Reference is also made to an earlier appeal decision¹ at the same site; however, I understand that a noise assessment was not available to that Inspector. Accordingly, I must determine the appeal on its own merits and on the evidence before me.
9. Notwithstanding any existing effects of the flue on current living conditions, the proposed development has the potential to worsen that situation. That no objections have been raised from neighbours does not overcome the potential harm I have found above.
10. I therefore conclude that it has not been demonstrated that the proposed development would provide acceptable living conditions for occupiers, with particular regard to noise and odour. Accordingly, the proposal conflicts with Policy Q2 of the Lambeth Local Plan and paragraph 180 of the National Planning Policy Framework, which together require avoidance of noise that gives rise to adverse impacts on health and quality of life.

Conclusion

11. For the reasons given above I conclude that the appeal should be dismissed.

Patrick Hanna

INSPECTOR

¹ Appeal decision APP/N5660/W/17/3178883