
Appeal Decision

Site visit made on 12 November 2019

by Rajeevan Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/X5990/C/19/3224964
41 Spring Street, London W2 1JA

- 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 the Company Secretary on behalf of Azzurri Group against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 11 February 2019.
 - The breach of planning control as alleged in the notice is without the requisite planning permission and within the last 4 years, the installation of a kitchen extract fan and extract duct on the roof of the property as outlined in red in Photographs 'A' and 'B' attached.
 - The requirements of the notice are:
 - a) Remove the kitchen extract fan and extract duct installed on the roof of the Property as outlined in red in Photographs 'A' and 'B' attached; and
 - a) Remove all brackets, pipework, fixtures and fittings associated with the kitchen extract fan and extract duct installed on the roof of the Property; and
 - b) Following completion of steps a) and b), ensure that all the resultant debris and equipment is permanently removed from the property.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by:

- the replacement of the second a) with b) in section 5 (what you are required to do); and
- the replacement of b) with c) in section 5 (what you are required to do);

Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

2. Given the grounds of appeal, I am not considering the planning merits of the development and cannot therefore impose the suggested planning conditions.

3. I have a duty to ensure that the notice is in order and I have been referred by the Council to an obvious typographical error within section 5 where the list of 3 requirements incorrectly has an '(a)', 'a)' and a 'b)'. My understanding of the notice is not affected by this error and nothing within the appellant's submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a minor correction is therefore necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The appeal on Ground (f)

4. The appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The appellant states that the principle of locating mechanical extract equipment on the roof to service this premises was established by planning permission 97/05899/FULL¹. However, the Council has provided copies of the approved drawings, and it is clear that the current extraction equipment is significantly larger than the approved extract duct. As such the previous approval does not provide support for the current extract duct which is materially different and does not benefit from planning permission.
5. The appellant also states that the enforcement notice fails to reference any harm arising from noise and therefore the visual harm could have been addressed through the provision of a screen and/or appropriately painting the ductwork. Given that a ground (a) appeal has lapsed, I cannot assess the planning merits of the case, and I must take the notice at face value. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not overcome the breach of planning control and planning permission would still be required. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

6. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from six to ten months, in order to prepare the necessary documents/drawings to receive both pre-application enquiries and planning permission and appoint contractors to remove and erect the replacement extraction equipment. The appellant states that compliance without any replacement of extraction system would force the restaurant to shut down, thereby creating a vacant unit and the unemployment of all staff.
7. In response to this, the Council have advised that they aim to determine pre-application enquiries within 21 days and highlight that the statutory time period for determining such planning applications is 8 weeks. The current period for compliance should allow sufficient time for the Council to consider an alternative proposal and for the requirements to be undertaken if agreement on a suitable solution can be reached. I conclude that six months would be reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

¹ Approved on 26 February 1998

Conclusion

8. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR