
Appeal Decision

Site visit made on 21 January 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Appeal Ref: APP/N1920/C/19/3234670

5 Southgate Road, Potters Bar, Hertfordshire, EN6 5DR

- 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 Takis Christodoulou against an enforcement notice issued by Hertsmere Borough Council.
- The enforcement notice was issued on 15 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a flue to the rear of the property.
- The requirements of the notice are: -
 1. Remove the unauthorised flue from the property and its premises
 2. Remove all fittings and wiring associated with the unauthorised flue
 3. Make good any damage to the property resulting for compliance with other requirements of the notice.
 4. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The ground (a) appeal and the deemed planning application

Main Issues

1. The main issues are: -
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on the living conditions of nearby occupiers with regard to noise and fumes.

Reasons

Background

2. The flue that is the subject of the enforcement notice appears to have been erected sometime in 2017. From the evidence before me it would appear that there was a flue on the rear of the appeal premises in 2015 and that the flue that has been erected is a replacement for that flue. There is no dispute that the design and siting of the existing flue is different to that it replaced.

3. I have little evidence to indicate whether the previous extract flue was covered by the planning permissions¹ cited by the Council or it received a separate planning permission or was unauthorised. In any event, the Council has not sought to claim that this previous extractor flue was unacceptable for any reason and I have no reason to dispute the fact that the existing flue has replaced that previously installed on the building.
4. The information before me also indicates that the existing flue has been modified since the enforcement notice was issued. Both parties also pointed out to me on site that the flue has been raised in height by an additional section being added to the ductwork below the top cowl structure. I have dealt with the appeal on this basis.

Character and appearance

5. 5 Southgate Road is in use as a restaurant and it is within a parade of shops that is close to the junction of Southgate Road, the A1000 and Mutton Lane. The area in the immediate vicinity of this junction is characterised by a variety of commercial and residential uses. There are various commercial uses on the ground floor of this block and there are residential units on the first and second floors with access to some of these dwellings being via an external stair and walkway on the rear of the parade.
6. Only the top of the flue's cowl can be seen in the relatively distant view from the footway adjacent to the bus shelter on the same side of Southgate Road. Therefore, the development has no material impact on the character and appearance of the area when viewed from Southgate Road.
7. Nevertheless, the extractor flue can be viewed from the A1000 in the gap between the properties close to the junction and due to its overall height and materials, a polished finish metal, it draws the eye. Nonetheless, it is seen in views from that road in conjunction with the metal, external stairs and the various pieces of plant, including air conditioning units and satellite dishes, that are on the rear of the parade. In addition, I noted that there is an example of an extract flue that is highly visible from the A1000.
8. In this type of mixed commercial/residential area it is likely that a flue of a similar design to that before me would not appear unexpected. Furthermore, I note that the appellant has suggested that the existing flue could be painted or clad to minimise its visual impact. I consider, that painting/coating the flue or cladding it in a material of a dark recessive colour with a matt finish would mitigate the visual impact arising from its existing materials. If I was minded to allow the appeal a planning condition could be imposed to control the submission and implementation of a suitable scheme in this respect.
9. However, the flue is highly visible from a number of the residential units that are accessed off the rear walkway. Whereas, the former flue may well have been quite noticeable from certain windows in those residential properties, the existing flue is likely to be noticeable from different windows. The alterations to the materials of the flue would not significantly reduce the visual impact of the flue when viewed from those dwellings. Yet, I am not convinced that the overall visual impact, in this regard, would be materially different to that with the former flue in place when assessed in the round.

¹ Ref Nos TP/13/1455 & 15/0379/FUL

10. In conclusion, considering all of the above the visual impact of the painted/clad flue would not be sufficiently adverse to harm the overall character and appearance of this mixed commercial/residential area. It follows that it would not conflict with Policies SP1 and CS22 of the Core Strategy (CS) and Policy SADM30 of the Site Allocations and Development Management Policies Plan (SADMPP) which together, amongst other things, seek to ensure the creation of attractive places and complement and avoid prejudicing, either individually or cumulatively, characteristics and features of the built environment.

Living conditions

11. Noise from the extractor flue is audible when standing close to it, but I noted that the noise dissipates quite noticeably when standing by the nearest windows to the residential units. Moreover, there are reasonably high background noise levels hereabouts given the various businesses in the area, the high volumes of traffic passing along the adjacent highways and through the road junction. I acknowledge that other times of the day that the background noise levels may be different. There were no fumes/odours noticeable from the flue but the restaurant did not appear to be open at the time of my visit.
12. I also note that a number of the occupiers of the adjacent residential units have stated that the noise and fumes from the flue have impacted on their lives and that the Council's Environmental Health Section (the EH) considered that the initial complaints of noise and odour in relation to the flue were substantiated.
13. However, in relation to fumes the raising of the height of the flue would normally be expected to assist with the dissipation of any odours and the Council have not disputed that the flue now terminates above eaves level and at least one metre above the height of openable windows in the residential units. In addition, in my experience modern fume extractor equipment fitted with pre-filtration and an activated carbon filter unit should minimise cooking odours if properly operated and maintained. This is a replacement facility and I have no evidence to indicate that the previous flue gave rise to any substantiated complaints. I consider it unlikely that the appellant would have ordered an inferior extraction system in technical terms and it appears that the issues with odour could have been caused in part by the previous height of the existing ductwork.
14. Nonetheless, I have been provided with little evidence as to whether the flue as altered now meets all of the concerns raised by the EH. Even so, the Council have suggested that a planning condition could require details to be submitted and the scheme implemented within a set time period to meet all the concerns raised by the EH. With adherence to that planning condition, the development would minimise and mitigate the impact of the noise and fumes associated with the flue and it would have a limited impact upon the living conditions of the occupiers of nearby properties in these respects.
15. Taking into account all of the above, the development would not adversely affect the living conditions of the occupiers of nearby properties with regard to noise and fumes. It follows that it would, in these respects, comply with SADMPP Policy SADM30 which seeks, amongst other things, to ensure that development has limited impact on the amenity of occupiers of the site, its neighbours, and its surroundings in terms of nuisance and pollution. It would

also comply, in these respects, with CS Policy SP1 which seeks, amongst other things, to ensure that pollutants are minimised, including emissions to air and noise.

Other matters

16. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.
17. Reference is made to a nearby grade II listed building, a former public house, within the evidence before me. I noted on the site visit that, in my experience, a building adjacent to the road junction appears to be a former public house. The Council has not stated that the development has harmed the setting of this listed building. However, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
18. I have very little evidence before me in relation to the special interest/significance of the former public house. However, based on my observations I consider that the significance of this building appears to be mainly derived from its age, historic fabric, former use and architectural features. Its significance is mainly experienced from within the curtilage of the building and the adjacent highways. The elements of setting that contribute to its significance include its relationship to the highways, the road junction and its immediate plot. In that context, I consider that the appeal site contributes little, if anything, to the significance of this building, or its setting. In addition, due to my findings above, on character and appearance, I consider that the development would have little impact on the surrounding area. As such, the development would have a neutral impact on the special interest and significance of the listed building and the expectations of the Act would be met.

Conditions

19. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the National Planning Policy Framework. In the interests of conciseness and enforceability the wording of the conditions has been amended.
20. I have deleted the references to specific factors, within its suggested conditions that the Council consider should or should not form part of the extract system or the painting/cladding as they are unnecessary as the Council would have control over whether the schemes it approves meets its minimum requirements. I have also amended suggested condition 1 to ensure that the timetable associated with its requirements matches that of the Council's suggested condition 2.
21. The purpose of both of the suggested conditions is to require the appellant to comply with strict timetables for dealing with the submission and implementation of a suitable system for the treatment and extraction of cooking odours and the painting/cladding of the flue both of which need to be addressed in order to make the development acceptable. The conditions are

drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the conditions are therefore to ensure that the development permitted by the grant of planning permission may only remain and/or in use if the appellant complies with each one of a series of requirements.

22. The conditions are necessary in the interests of the living conditions of nearby residents and the character and appearance of the area.

Conclusion

23. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

24. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the erection of a flue to the rear of the property on land at 5 Southgate Road, Potters Bar, Hertfordshire, EN6 5DR referred to in the notice, subject to the following conditions:

1. Unless within 1 month of the date of this decision a scheme for a suitable system for the treatment and extraction of cooking odours, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the flue hereby permitted shall cease until such time as a scheme is approved and implemented.

Upon installation of the scheme specified in this condition, that system including any filtration systems shall thereafter be maintained in accordance with the manufacturer's recommendations and the flue shall be operated so as to ensure that noise from the operation of its air intake and extraction ducts and fans, and any other external plant, must not cause an increase over the background noise level at any time, as measured at the nearest noise sensitive premises.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2. Unless within 1 month of the date of this decision a scheme for painting or cladding the flue, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the flue, its associated fittings and wiring shall be removed from the land and any damage to the property resulting from compliance with the requirements of this condition shall be made good until such time as a scheme is approved and implemented. Upon implementation of the approved

scheme specified in this condition, that scheme shall thereafter be maintained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

D. Boffin

INSPECTOR