



Appeal Decision

Site visit made on 9 March 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 07 April 2020

Appeal Ref: APP/K5600/C/19/3237892

Kung Fu Oriental Buffet, 180 - 1832 Earl's Court Road, London SW5 9QG

- 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 Mrs J Jiang of HJ Tenger against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice was issued on 15 August 2019.
 - The breach of planning control as alleged in the notice is *Without planning permission, the erection of ventilation ducting on the northern wall within the courtyard at the rear of 180-182 Earl's Court Road (As outlined in red on the proposed 'New Equipment' drawing submitted with planning application reference **PP/18/03497** as shown in appendix 1).*
 - The requirements of the notice are to:
 - Remove the ducting and supporting brackets from the wall on the northern elevation of the courtyard (As outlined in red on the proposed 'New Equipment' drawing submitted with planning application reference **PP/18/03497** as shown in appendix 1)
 - Remove all resultant materials from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal is dismissed and the enforcement notice is upheld with variations.

The appeal on ground (a)

2. As set out above, the appeal concerns a ventilation duct that has been erected to serve the Kung Fu Oriental Buffet restaurant, sited against the property wall to the north of a service yard to the rear of properties on Earl's Court Road and Nevern Place, and overlooked by properties on Spear Mews to the rear.
3. The cylindrical ducting protrudes significantly above the rear wall which serves as a parapet wall to two flats to the rear of properties on Nevern Place. These are identified in the notice as being Flat 2 at 2 Nevern Place and Flat 3 at 1 Nevern Place. However, they appear to each be Flat 2 at Nos 3 and 5 Nevern Place. They have a southern aspect over the service yard, with a flat roofed section to the south beyond their rear windows, around 2m deep, to the parapet wall. The duct rises above the wall at the central section between the 2 flats.
4. The Council's reasons for issuing the notice principally concerned the effects of the ducting on the living conditions of the occupiers of these 2 flats, by reason of enclosure as well as potential noise and smells. In its statement of case the

Council also expressed the view that the development adversely affects the character of the area, including the Nevern Square Conservation Area. Therefore the main issues in considering the appeal on ground (a) are (i) the effects of the development on the living conditions of neighbouring occupiers, and (ii) the effects of the development on the character and appearance of the area including whether the development preserves or enhances the character or appearance of the Nevern Square Conservation Area.

Living conditions

5. The two flats to the rear have very different relationships to the ducting. The easternmost flat has no easy means of accessing the flat roofed area beyond it, with windows approximately 4 foot above floor level looking out to the south. The ducting is nonetheless clearly visible from inside the flat. The westernmost flat, by contrast, has internal steps up to French doors that open out onto the flat roofed area, that is used as a garden terrace by the occupiers of that flat and set out with furniture and planters.
6. Policy CL5 of the Consolidated Local Plan requires all development to ensure good living conditions for the occupants of existing buildings, and requires that there is no harmful increase in the sense of enclosure to existing buildings, balconies or terraces. The ducting is centrally placed between the two flats and, although clearly visible internally from each of them, does not cause significant harm by reason of its appearance, because adequate light into, and an open outlook from, the interiors of the flats are maintained. However, the oppressive size and industrial appearance of the cylindrical ducting, rather towering over the outdoor terrace of the westernmost flat, fails to meet this policy requirement to ensure good living conditions, and is harmful to the living conditions of those neighbouring occupiers.
7. Doubt has been expressed as to the lawfulness of the use of the outdoor terrace by the occupiers of the flat, but there is no evidence before me to suggest that it is unauthorised. Reference has also been made to the ducting that was in place before the existing development, and I acknowledge that ventilation of some form in this location is not new. However, photographs of the previous ducting show that it did not extend to the height of that presently found, and thus I consider that the new ducting is significantly more oppressive to the neighbours using the western terrace in its appearance than any previously existing, and does not meet the requirements of policy CL5.
8. The Council has also expressed concern that, in the absence of controls imposed by planning conditions, the ducting could give rise to unacceptable effects of noise and smell, and neighbouring occupiers have referred to such impacts in correspondence on the appeal. At my site visit the ventilation was clearly audible from inside each flat, and cooking aromas were also discernible. These effects were considerably more apparent when standing outside on the western terrace.
9. An acoustic report has been submitted by the appellant identifying that mitigation measures could be taken to ensure that negative impacts on amenity do not arise by reason of noise. However, that report identifies the closest noise sensitive receivers to be at the windows of the residence located on the first floor to the rear of the property, at a minimum distance of 6m from the ventilation louvres. The effects of the mitigation measures on the users of the outdoor terrace, which are closer to the noise source, are therefore not

clear, and thus on present information I cannot be satisfied that these concerns could be overcome in the manner suggested. I am mindful that the appeal premises have previously been in use as a nightclub and thus the residential environment has not historically been noise-free. However, the impacts are qualitatively different, with a nightclub having been unlikely to have affected the daytime use of an outdoor terrace. There is also an appreciable degree of noise from the activity of the service yard, although again this is very different from the more constant hum of the ventilation equipment in very close proximity.

Character and appearance, including of the Conservation Area

10. The Council's reasons for issuing the notice, although identifying only the adverse impacts on neighbouring properties, refer to development plan policies that require development to respect the character and appearance of existing buildings and the environment, including the protection of views that contribute to such character including in Conservation Areas.
11. The development is sited adjoining but not within the Nevern Square Conservation Area. Any views of it appear to be private and not from the public realm. It is an industrial installation that is commensurate with the other ventilation systems and restaurant paraphernalia found in the service yard. Although affecting the living conditions of the neighbours to the extent I have found above, the development has no discernibly adverse impact on the building on which it is sited, the character of the area, or on the significance of the heritage asset that is the Conservation Area. I find no conflict with policies CL1, CL6 or CL11, and consider that the development does not fail to preserve or enhance the character or appearance of the Nevern Square Conservation Area.

Conclusion on the appeal on ground (a)

12. I consider that the development conflicts with the requirements of policy CL5 to ensure good living conditions for neighbouring occupiers, by failing to avoid a harmful increase in the sense of enclosure to the users of the adjoining outdoor terrace, and by failing to demonstrate that the reasonable enjoyment of the flats and the terrace are not harmed due to increases in noise or odours. The appellant has referred to development plan policies and to national policy in the Framework that seek to support economic growth generally, and the Earl's Court District Centre in particular. In balancing the harm to living conditions against the social and economic desirability of the restaurant use, it appears from the information before me that alternative ventilation solutions are likely to be available, and are the subject of ongoing discussions between the parties to the appeal, and therefore that the continuation of the restaurant use will not be prejudiced by the dismissal of the appeal on ground (a). Overall I find that the development conflicts with the development plan for the area, and no material considerations of sufficient weight to overcome that conflict exist. I therefore conclude that the appeal on ground (a) should not succeed. Subject to my findings on ground (g) I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (g)

13. The appellant sets out in detail why 6 months are required to comply with the notice on terms that will enable the continued restaurant use. This comprises

the time required to design an alternative scheme, secure planning permission for it, perhaps with pre-application advice from the Council, and to procure contractors to carry out the works required. In ordinary circumstances I should have allowed the 6 months sought by the appellant. In the present public health circumstances causing some disruption to public services and other sectors, I consider that this period needs to be prolonged by a further 3 months. I shall therefore vary the period for compliance prior to upholding the notice to 9 months, and the appeal on ground (g) succeeds to this extent.

Formal Decision

14. The appeal succeeds on ground (g) and it is directed that the enforcement notice be varied by deleting "Three" from paragraph 5 and substituted with "Nine". Subject to that variation 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.

Laura Renaudon

INSPECTOR