
Appeal Decision

Site visit made on 26 July 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2021

Appeal Ref: APP/G5750/W/21/3267317

250 Green Street, Forest Gate, London E7 8LF

- 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 Kareem Memon against the decision of the Council of the London Borough of Newham.
 - The application Ref 20/02176/FUL, dated 2 October 2020, was refused by notice dated 9 December 2020.
 - The development proposed is Change of use from class E(a) retail to E(b) restaurant at ground and basement, demolition of existing part of building to be rebuilt with side windows, construction of a ground floor rear extension and proposed loft conversion with rear dormer including two velux windows on the front elevation to the first floor flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted amended plans which show a heightened extraction flue and revised window position within the roof extension. These changes involve material alterations to the scheme subject to this appeal. However, the Procedural Guide to Planning appeals (2021) at Annexe M states that the appeal process should not be used to evolve a scheme and it is important that I determine this appeal based on what was considered by the council, and on which interested people's views were sought. I have therefore determined the appeal on the basis of the plans that were submitted to the Council.
3. The London Plan (2021) was adopted after the Council issued its decision notice. Both parties have been afforded the opportunity to comment on its implications for this proposal. I must determine the appeal based on the policies in place at the time of my decision.

Main Issues

4. The first main issue is the effect of the proposal on the living conditions of the occupiers of the first floor flat as a result of the positioning of the extraction flue, with particular regard to noise, cooking odours and fumes. The second main issue is the effect of the extraction flue on the character and appearance of the area.

Reasons

Living conditions

5. The proposal includes the provision of a bedroom within the roof space to be provided in association with a flat. The principal window to this room would be provided within a large roof extension which would have views towards the flue which would terminate above the pitched roof of the first-floor outrigger.
6. However, the evidence indicates that the flue would terminate below the level of the window which would serve this bedroom. At this height, the flue would be likely to expose occupiers of the flat via the bedroom window to unacceptable levels of cooking odours and fumes which would be detrimental to their living conditions and which would have an adverse impact on the enjoyment of their home. Although the flue is set to the west of the window along the outrigger, the separation distance would be unlikely to be enough to mitigate the impact.
7. I conclude, on this issue therefore, that the proposal as a result of the height of the flue would be contrary to Policies SP1, SP2, SP3, SP8, S6 and H1 of the Newham Local Plan (2018) (NLP) which amongst other things require high quality housing that creates healthy neighbourhoods and places while also requiring amongst other things that all development achieves good neighbourliness by avoiding negative and maximising positive environmental and design impacts for neighbours on and off the site.
8. Details, such as amongst other things, vibration mounts, fan noise rating and silencer details could be agreed via condition, were I minded to allow the appeal, and it is likely that the proposal could be made acceptable in terms of noise impact.

Character and appearance

9. The flue shown on the originally submitted plans would be placed to the rear of the commercial premises and would not be excessive in height in comparison to the building onto which it would be fitted. It would be viewed within the context of what appear to be other extraction systems on properties to the south, as well as other paraphernalia such as air conditioning systems and satellite dishes on nearby property.
10. Within this context, the extraction flue would not be discordant with other features associated with nearby commercial and domestic premises and would cause no harm to the character and appearance of the area. I therefore conclude that with regard to this particular matter, the proposal would not conflict with Policies SP1, SP3, SP8 and S6 of the NLP which amongst other things require proposals which respect local context and character.

Other Matters

11. I am aware that other approvals have been granted at the site and other restaurant sites have been brought to my attention, however there is nothing within the evidence to suggest any previous scheme at the site or within the area exactly replicates the circumstances of that before me. I therefore afford these matters limited weight. I note that the Council has not raised issue with other aspects of the proposal and I have no reason to disagree with this position.

12. The scheme would give rise to social and economic benefits as a result of the provision of the restaurant and additional living accommodation. However, there is nothing to indicate that the same benefits could not be achieved in some alternative manner, and the proposal would result in unacceptable harm to the living conditions of the occupiers of the flat and this is a matter that I have afforded significant weight.
13. The appellant expresses concern regarding communications with the Council, although this is a matter that should be directed through the Council's complaints process, should the appellant wish.

Conclusion

14. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR