



Appeal Decision

Site visit made on 24 August 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 06 September 2021

Appeal Ref: APP/Y5420/C/20/3259579
179-183 High Road, London N22 6BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ercan Aksu against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 7 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a flue/extractor/ventilation duct.
- The requirements of the notice are to remove the flue/extract/ventilation ducts [in] its entirety, including its fixtures and fittings.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended.

Summary of 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: (i) the character and appearance of the area and, (ii) the living conditions of neighbouring occupants with regard to noise.

Reasons: Character and Appearance

2. The appeal site is a restaurant located within the designated primary shopping frontage of the Wood Green Metropolitan Centre. Two extraction ducts have been installed above the restaurant on the upper storeys of the shopping centre, adjoining the multi-storey car park. The ducting is visible from the High Road and nearby residential premises due to its size and prominent location.
3. It is explained that planning permission was granted for a second extractor duct, which was connected to an existing duct, for the use of the ground floor restaurant¹. This was installed in 2018. The restaurant was subsequently expanded and the extraction system was upgraded. This required larger ducting, which was installed without planning permission and is the subject of the notice. The appellant says he has worked with the Council to mitigate the adverse effects of the ducting, which included painting it to match the brick walls on which it is sited.

¹ Ref HGY/2017/0711.

4. The unauthorised ducting is large and bulky, with an 'industrial' appearance, which is incongruous in its setting. In its unpainted state, I consider that the development would have had an adverse impact on the character and appearance of the area. However, I saw from my site visit that the ducting has been painted in a terracotta colour. It now blends in with the surrounding brickwork, alleviating its adverse effect. The Council has indicated that it agrees the visual harm has been remedied and suggests a condition to ensure the maintenance of the painting.
5. Therefore, I conclude on this issue that, subject to an appropriate condition to ensure the ducting remains appropriately painted, the development does not have an adverse effect on the character and appearance of the area.

Living Conditions

6. The Council has received complaints from numerous sources about noise from the development. Although the restaurant is within a busy commercial area, the ducting sits at a high level directly opposite residential flats and a hotel. The noise from the extraction system can be heard above the traffic noise below, and this is likely to be even more pronounced during the night. This largely accords with the findings of the appellant's noise impact assessment². The assessment concluded that noise emissions from the plant units would not have an adverse impact on the nearest residential receivers provided that the installed acoustic silencers are properly maintained.
7. The Council has indicated that it considers that the harm caused by the development could be remedied by the imposition of a planning condition requiring noise mitigation. I consider, therefore, that providing the acoustic silencers have been installed in accordance with the manufacturer's recommendations, and are properly maintained, the development would not have an adverse effect on the living conditions of neighbouring occupants.

Other Matters

8. I note the concerns from a nearby resident with regard to air quality. This has not been referenced by the Council and the evidence on the matter is limited. I consider, therefore, that although the new extraction system may produce more smoke than the previous system, this is unlikely to be material.

Conclusion

9. I conclude that the development can be made acceptable through the imposition of suitable planning conditions, which are set out below. Subject to the discharge of the conditions imposed, the development would accord with Policies DM1 and DM23 of the Development Management Development Plan³, which seek to secure high quality design and minimise noise pollution. It would thus be in accordance with the development plan.
10. The notice also refers to Policy 7.15 of the London Plan (2016), which I understand has been superseded since the notice was issued. The relevant policy of the recently adopted London Plan has not been provided.

² KP Acoustics Ltd Planning Compliance Report 21256.PCR.01 September 2020.

³ Haringey Local Plan: Development Management Development Plan Document, July 2017.

Conclusion

11. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
12. The appeal on ground (g) does not, therefore, fall to be considered.

Formal Decision

13. 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 as amended for the development already carried out, namely the installation of a flue/extractor/ventilation duct on land at 179-183 High Road, London N22 6BA referred to in the notice, subject to the following conditions:

- 1) The flue/extractor/ventilation duct hereby approved shall be painted to match the surrounding brickwork. The matching paintwork shall thereafter be maintained.
- 2) The building operations hereby permitted shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for noise mitigation shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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.

Debbie Moore

Inspector