



Appeal Decision

Site visit made on 17 January 2022

by Nigel Harrison BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2022

Appeal Ref: APP/E2001/W/21/3273645

11-15 Vicar Lane, Howden, East Riding of Yorkshire, DN14 7BP

- 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 Mrs Joanna Blake against the decision of East Riding of Yorkshire Council.
 - The application Ref: 20/02230/PFL dated 8 June 2020, was refused by notice dated 28 January 2021.
 - The development proposed is: Installation of an extraction flue system (Retrospective application).
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Decision

1. The appeal is allowed, and planning permission is granted for an extraction flue system at 11-15 Vicar Lane, Howden, East Riding of Yorkshire, DN14 7BP in accordance with the terms of the application, Ref: 20/02230/PFL dated 8 June 2020, subject to the following condition:
 - 1) The development hereby permitted is as detailed on the following approved plans: VLG002 Rev B Site Plan and Elevations, received on 23 October 2020.
 - 2) Within 6 months of the date of this decision the extraction flue shall be painted black or an alternative a dark neutral colour to be agreed beforehand in writing by the Local Planning Authority and shall thereafter be retained in that colour.

Procedural Matters

2. Although it differs from that given on the application form, I have taken the description of the development from that given on the decision notice as it more precisely describes the proposal.
3. The proposal is retrospective, as the flue has already been installed. Therefore, I intend to consider the appeal on the basis of the proposal being for the retention of the extraction flue system as shown on the submitted plans.

Main Issues

4. There are two main issues. Firstly, whether the development would preserve or enhance the character of the Howden Conservation Area and the setting of nearby listed buildings; and secondly; the effect of the development on the occupants of nearby residential properties with regard to odours.

Reasons

Conservation Area and Setting of Listed Buildings

5. Sections 16 and 66 of the *Planning Listed Buildings and Conservation Areas Act 1990* (The Act) set out the statutory duty for decision makers to pay special regard to the desirability of preserving listed buildings and their settings. Section 72 requires special attention to be paid to the desirability of preserving the character or appearance of that area.
6. Policy ENV3 of the *East Riding Local Plan Strategy Document* (LP) identifies that the significance, views setting, character, appearance, and context of heritage assets should be conserved. It says development which is likely to cause harm to the significance of a heritage asset will only be granted where the public benefits of the proposal outweigh the potential harm. This reflects the statutory duties in the Act and national policy on the historic environment set out in the *National Planning Policy Framework* (the Framework). LP Policy ENV1 requires development to safeguard the views and setting of outstanding natural features and skylines.
7. Paragraph 199 of the Framework makes it clear that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Paragraph 201 says where a development proposal will lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
8. The site is within the Howden Conservation Area (CA) and close to a number of listed buildings including the Grade 1 listed Howden Minster to the south of Vicar Lane. The appeal premises are not listed. The flue is located to the rear elevation of the building and extends vertically from a point about 1.8m above ground level to about 0.9m below the ridge. It is a galvanised steel structure and is about 0.4m in diameter (as dimensioned on the submitted drawings).
9. Given its position to the rear the flue is not visible in the public realm from Vicar Lane or other close viewpoints, although it can be seen from within the rear yards and from properties fronting Vicar Lane and Market Place. However, it is clearly visible in the public realm from Bridgegate across the 'gap' provided by the car park opposite The Bowman's public house. The view towards the rear of the site from Bridgegate comprises a collection of largely 19th century buildings, several of which are Grade II listed, and is dominated by the tower and finial of the Minster. A photograph of this view including the rear of the appeal premises is included within the Howden Conservation Area Appraisal. The Appraisal identifies that the special significance of the CA is found in the survival of its largely intact historic core, with the Minster as its focus.
10. The Council says the flue has a negative impact upon this view, saying this view has remained clear of modern fixtures and fittings. However, due to its position below the ridge it does not intrude upon the skyline and is seen against the immediate backdrop of the appeal building which lessens its impact. It is true that the shiny galvanised finish draws the eye to some degree, although the appellant's suggestion of painting the flue a dark colour would make it appear more regressive and mitigate its overall impact. On this

basis I do not consider that the flue would be prominent or obtrusive in views towards the Minster tower from Bridgegate or any other public viewpoint.

11. On balance, subject to a condition requiring repainting, I conclude on this issue that the flue would have a neutral effect that would preserve the character and appearance of the Howden CA. Now would it materially harm the setting of nearby listed buildings including the Minster. Therefore, the question of public benefits to outweigh any harm does not arise. The proposal accords with national policy in the Framework and LP Policies ENV3 and ENV1.

Effect on Living Conditions

12. The appellant has confirmed that the upper floors of the appeal premises are no longer residential although there are apartments nearby at 1-3 Vicar Lane and 31-32 Market Place. I note that the previous system had no filtration for kitchen emissions, and the appellant says the new system reduces smells to the surrounding area, has a reduced operational sound power level, and is the appropriate specification for the size of the kitchen and equipment.
13. Nonetheless, this is questioned by the Public Protection Officer (PPO) who, despite the system being improved to resolve previous noise and odour complaints, says odours are still likely to affect the occupiers of residential property in the locality. The PPO says that details showing a scheme of fine filtration and odour control are needed in order to fully assess whether the proposal is compliant with EMAQ¹ guidance. However, no clear evidence of why the installed modern extraction system would not be able to deal satisfactorily with cooking odours has been put forward, and I have not been made aware of any complaints from local residents in this regard.
14. Overall, on the basis of the evidence before me, I conclude on this issue that the proposal will not materially harm the living conditions of nearby residential occupiers. As such, it complies with LP Policy ENV1 which, amongst other things, requires development to have regard to the amenity of existing or proposed properties.

Conditions

15. I have considered the conditions put forward by the Council in the light of the advice in *the* Framework and Planning Practice Guidance. A condition is needed requiring the flue to be painted and retained black or another dark neutral colour, in the interests of the appearance of the development and the surrounding area. For the avoidance of doubt a condition referring to the submitted plans is required.

Conclusion

16. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Nigel Harrison

INSPECTOR

¹ Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems