



Appeal Decision

Site visit made on 12 January 2022

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/B5480/W/22/3301067

38 Corbets Tey Road, Havering, Upminster RM14 2AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr John Hoggett of Roots Restaurant against the London Borough of Havering.
 - The application Ref P0240.22, is dated 16 February 2022.
 - The development proposed was originally described as a 3-meter single-storey side extension and an infill extension at the rear. Ventilation in the side extension integrated into the roof of the build-up for the kitchen.
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Decision

1. The appeal is allowed and planning permission is granted for a 3-metre single-storey side extension and an infill extension at the rear, at 38 Corbets Tey Road, Havering, Upminster, RM14 2AD in accordance with the terms of the application, Ref P0240.22, dated 16 February 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'Proposed Plans 21_179_05-P01', and 'Proposed Elevations 21_179_04-P02', except in respect of the labelled 'ventilation integrated into roof build-up.'
 - 3) Prior to commencement of the hereby permitted development, details of the ventilation system shall be submitted to and approved in writing by the Local Planning Authority, which shall include schemes to remove and/or disperse odours and odorous material, and to control noise and vibration. Schemes and equipment as approved shall be implemented prior to first occupation, and shall thereafter be retained, and properly maintained and operated within design specifications during normal working hours.
 - 4) All new external finishes shall be carried out in materials to match those of the existing building and thereafter retained.

Preliminary Matters

2. The Council's statement clarifies that the application would have been refused if a decision had been made, and provides its reason.

3. The property has been subject to enforcement action for the removal of various works. An appeal against the enforcement notice was dismissed¹ and the proposal before me seeks in part to remedy the unauthorised position. Any other works relating to this remedy are outwith the matters before me.
4. The description of development in the banner heading above is taken from the application form. However, in my decision allowing this appeal I have not included the second sentence of this description for “ventilation in the side extension integrated into the roof of the build-up for the kitchen”. This is because it would now be inaccurate following consideration of the appeal evidence, which I consider further in my reasoning below. I have considered the impact of this amendment and do not consider that it would prejudice the interest of any parties. It would also not substantially change the proposal overall, which subject to agreement via condition, could still potentially include roof integrated ventilation. Amended plans have not been necessary.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, with respect to the impact of the ventilation system.

Reasons

6. The appeal property is a 2-storey end of terrace building in a short parade of predominantly retail and commercial premises. It comprises a café/restaurant at ground floor and residential above, and is situated on a corner plot with Stewart Avenue which is predominantly residential. The proposal is for a single storey side and infill rear extension in matching materials, which wrap around the Stewart Avenue elevation. The plans also show 2 ventilation extraction units integrated into the roof of the kitchen side extension.
7. In the Officer Report written after the appeal was submitted, the Council raises no issue with the visual impact of the extensions or the extraction units, and I find no reason to disagree. However, the café is close to neighbouring residential properties above the premises and at 2b Stewart Avenue. Therefore, the ventilation from its kitchen has the potential to significantly impact the living conditions of residents in those properties due to excessive noise, vibration, and cooking odours.
8. The Council considered that the ventilation equipment should disperse above eaves level, consistent with other uses in the vicinity, whereas the plans show extraction equipment within the sloping roof of the proposed single storey kitchen. These 2 integral ventilation units were not originally accompanied by technical details or specifications of the equipment. The Council therefore considered that due to a lack of information, it could not be sufficiently confident on the suitability of the proposed ventilation regarding its impact on neighbouring occupiers. This mirrored the previous appeal decision where the Inspector identified that they took a precautionary approach due to lack of information, because without adequate controls installations of this sort are likely to produce noise, vibration and odours that could cause significant nuisance.

¹ APP/B5480/C/19/3243459

9. While the Council contemplated the principle of using conditions to seek and agree further information in this regard, it concluded that this may mean granting a permission which cannot be implemented due to an inability to provide suitable extraction equipment.
10. The appellant subsequently provided in their evidence a detailed technical specification data sheet of a 'CK ReCirc™ Commercial Kitchen Recirculation extract system'. This does not require any external ducting, being a stand-alone unit contained internally in the kitchen. The specification identifies that a range of sizes and bespoke units are available. The appellant identifies that all units are fitted with the appropriate levels of high filtration required to comply with all regulations, and that this type of extract is common in central London.
11. I therefore accept that this fully internal system is a potential ventilation option to extract odorous air, that appears to be readily available on the market. While it may not be the only extraction ventilation solution available, I am satisfied that it is a reasonable option.
12. It therefore follows that a pre-commencement condition requiring full details of the scheme's ventilation system to be approved by the Council, would not relate to a potentially unimplementable permission. Furthermore, allowing the Council this further control over the final ventilation system to be approved would ensure that the proposal would not affect the occupiers of the neighbouring dwellings by virtue of odours, noise, and vibration.
13. In conclusion therefore, the proposed development would not harm the living conditions of neighbouring occupiers, with regard to the impact of the ventilation system. It would comply with policies 7, 26 and 34 of the Havering Local Plan 2016-2031 (2021), which promote high quality design and developments which fully integrate well with their neighbours, and specifically require no undue impact upon amenity and health and safety as a result of noise, odour, or vibration, including optimising the design of buildings to minimise such exposure.
14. The proposal would also comply with paragraph 130f) of the National Planning Policy Framework ('the Framework') (2021) which requires developments to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Conditions

15. I have attached the statutory condition to limit the lifespan of the planning permission, and one to specify the approved plans to provide clarity for the terms of the permission.
16. As explained in my reasoning above, I have imposed a pre-commencement condition requiring further details of the extract ventilation system to be submitted and agreed by the Local Planning Authority, to safeguard against odours, noise, and vibration. This is based on the Council's suggested conditions in this regard, subject to amendment to reflect paragraph 56 of the Framework and the Planning Practice Guidance.
17. A condition specifying matching materials is necessary to safeguard the character and appearance of the streetscene.

18. I have not imposed the Council's suggested conditions restricting amplified music in the external seating area, or for the removal of the external seating between specified hours. This is because the development being permitted contains no reference to the external seating area, and it is not shown on the plans, and thus these conditions are not necessary or relevant.

Conclusion

19. For the reasons given above, and having regard to all other matters raised, I conclude the development accords with the development plan taken as a whole with no material considerations outweighing this, and therefore the appeal is allowed.

L Hughes

INSPECTOR