



Appeal Decisions

Site visit made on 16 May 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2023

Appeal A Ref: APP/J1535/C/22/3308500

Appeal B Ref: APP/J1535/C/22/3308501

Land at "Aura" 179-181 High Road, Loughton IG10 4LF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr V Yigit (Appeal A) and Mr Umut Demir (Appeal B) against an enforcement notice issued by Epping Forest District Council.
- The notice was issued on 08 September 2022.
The breach of planning control as alleged in the notice is: Without planning permission: the installation of an extraction system onto the rear elevations of the property.
- The requirements of the notice are:
 1. Remove the metal framed extraction system shown in the approximate position on the attached plan as hatched.
 2. Remove all resultant debris from the land in compliance with Step 1.
- The period for compliance with the requirements is: One (1) month.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission (DPA) is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of decisions: The appeals are dismissed and the enforcement notice is upheld.

Preliminary and Procedural Matters

1. In the reasons given for issuing the enforcement notice, reference was made to policies of the 'Adopted Local Plan and Alterations', and of the 'Local Plan Submission Version'. The Epping Forest District Local Plan 2011-2033 (2023) (EFDLP) was adopted on 6th March 2023 and supersedes the policies stated in the enforcement notice. The appellant and the Council have had an opportunity to comment on this change.
2. I undertook a site visit on 16th May 2023 in relation to other appeals on the same site and by the same appellants. At that visit no representative of the appellants attended, but considering the extent of visibility from the street, I proceeded with the visit unaccompanied from public areas. I was appointed to determine Appeal A and Appeal B shortly after the date of the visit. As a result of that visit, the photographs I took, and the information before me by the parties, I am satisfied that I have all the information necessary for my decision, and that a second visit was not necessary.

Appeal A on ground (a) and the DPA

Main Issues

3. The main issues are the effects of the development on:

- The character and appearance of the area; and
- The local environment and living conditions of nearby residential occupiers, with particular regard to odour, particulates and noise.

Character and appearance

4. The development is a restaurant extraction system located at the rear of 179-181 High Road, and visible from Station Road, surrounding buildings, and car parking areas to the north.
5. Station Road has a predominantly residential character, with two and three storey dwellings set back from the road behind hedgerows. In the vicinity of the appeal site there are a number of buildings of traditional design in brick with tiled or slate roofs. Although there is variation of design, they collectively incorporate features such as brick chimneys, render panels with half-timberwork, slate hanging and traditionally proportioned fenestration. Although a block of flats of a distinctly modern character is a feature in some views, the predominant character of the area remains a traditional one.
6. Upper elements of the rear of buildings on High Road can be seen from Station Road where space between buildings allows it. One such space is that at the rear of the appeal site which affords clear views of the development, particularly its upper parts.
7. At the time of my visit, vegetation in planters on the flat roof of the ground floor rear extension filtered views of the horizontal lower elements of the extraction system. This planting softened its visual effects from vantage points at street level, and to a lesser degree, provided similar effects from car parking areas at ground level.
8. In contrast, the upper parts of the extraction system are much more prominent, and are a significant feature on the building, even from a distance. The predominantly green-coloured flues run in parallel vertically along the side of the building, and horizontally along the flat roof at second-floor level. The scale, extent, and industrial character of these elements jars with the traditional buildings in the vicinity, particularly those of domestic character. The effect is harm to the character and appearance of the area, which would not be mitigated by planning conditions in relation to its colour.
9. In conclusion, the structure is harmful to the character and appearance of the area, and contrary to the relevant aspects of EFDLP Policy DM9, which requires high quality design which contributes to the distinctive character of the local area.

Local environment and living conditions

10. The closest residential properties are those at 183 High Road (No.183), 9 Station Road (No.9) and 173 High Road (No.173). There are also other residential units in the vicinity in the upper floors of buildings on High Road, and a medical practice at 11 Station Road. Further afield, there are other

dwelling on the opposite side of Station Road. The lower elements of the extraction unit are at a comparable height to the first-floor windows of No.9, and the highest elements are close to second-floor windows of No.183, and relatively close to the rear of No.9.

11. In relation to odour and particulates, the close proximity of the extraction system terminus to the windows of residential properties increases the likelihood of negative effects on residents. I therefore attach significant weight to the objections from the Council's Environmental Health Air Quality Officer, and further weight to the comments and evidence of interested parties. In the absence of compelling evidence to the contrary from the appellants, it seems likely that there will be negative effects on residential occupiers arising from the development, either now or in the future.
12. In terms of noise, the appellant's Noise Impact Assessment Report (NIA) acknowledges the proximity of residential properties at No.183 and No.9. It concludes that the operation of the *proposed* mechanical plant, in accordance with British Standard guidance, would create a low impact on the nearest noise sensitive properties.
13. Although the Council allege excessive noise as a reason for issuing the notice, the evidence is very limited on this issue. The Council's Environmental Enforcement Officer, attached as an appendix to their statement, also recommends a planning condition which encompasses the conclusions of the NIA. In the simplest terms, the condition would require cessation of the extraction system at any time it exceeded the prevailing background noise levels.
14. However, interested parties allege greater noise impacts, and from further afield than the nearest residential premises. The NIA refers to the "*proposed* kitchen extraction system", and with the information before me it is not clear which aspects have been incorporated into the system installed. One such reference is to a barrier at least 1m taller than the highest point of the extraction systems installed on the roof, located between them and the nearest sensitive receptors. No such barrier had been installed at the time of my visit, and I have seen no assessment of the effects that such a barrier would have in terms of the character and appearance of the area and the outlook of neighbouring occupiers. The plans considered for the purposes of the NIA also included additional vertical elements at the extract terminuses on the 2nd floor roof which had not been installed.
15. Even if I were to consider any variation from the scheme assessed to be matters which could be required by planning condition, I also have concerns about the sufficiency of the assessment of background noise levels in the NIA. Monitoring only took place over a single period of four days and from a single measurement location, which was some distance from the nearest windows of the closest residential receptor. Overall, I am therefore not satisfied that operational sound levels of the extraction system have been demonstrated to be acceptable in this location, or that this matter could be adequately addressed by planning conditions.
16. In conclusion, with the information before me, the development is harmful to the local environment and living conditions of nearby residential occupiers, with particular regard to odour, particulates and noise. As a consequence, it conflicts with the relevant aspects of EFDLP Policy DM21, which requires that

development proposals do not lead to unacceptable impacts on the health, safety, wellbeing and amenity of occupiers of the development site, or the surrounding land.

Conclusion

17. For the reasons above, I conclude the development is harmful to the local environment and living conditions of nearby residential occupiers, with particular regard to odour, particulates and noise. Consequently, it conflicts with development plan policy, and there are no other material considerations that require a decision to be made other than in accordance with the development plan. The appeal on ground (a) therefore fails, and I refuse to grant planning permission on the application deemed to have been made under s177(5) of the Act.

Appeals A and B – ground (g)

18. The notice requires compliance with its requirements within one month. The appellants advise that that period would not be adequate to comply with the requirements of the enforcement notice, as the restaurant is operational and a new extraction system would need to be installed. They therefore request a compliance period of six months.
19. A longer period of 6 months would continue the harmful effects on the local environment and the living conditions of residential occupiers. There is nothing before me to demonstrate that the extraction system could not be removed within one month, or a compelling justification demonstrating that a substantially longer period would be required to facilitate installation of an alternative extraction system.
20. For the reasons given above, the appeal on ground (g) fails.

Decisions

Appeal A

21. The appeal is dismissed, 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.

Appeal B

22. The appeal is dismissed and the enforcement notice is upheld.

Peter White

INSPECTOR