



Appeal Decision

Site visit made on 19 June 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/E5900/W/22/3312508

Harbourmasters Office, 46 Goodhart Place, London E14 8EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Steven Lyon of Aquavista Waterside and Marinas Limited against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/22/00548, dated 5 April 2022, was approved on 20 July 2022 and planning permission was granted subject to conditions.
 - The development permitted is proposed minor works to the harbourmasters office to include the installation of a boiler flue and additional exterior door.
 - The conditions in dispute are Nos 4 and 5 which states that: 4 - a) Any mechanical plant and equipment within the development shall be designed and maintained for the lifetime of the development so that the rating level of noise does not exceed the typical measured background noise level (LA90,T) without the plant in operation as measured one metre from the nearest affected window of a habitable room in the nearest affected residential property. The noise impact to the adjacent development (currently under construction) should also be addressed and accounted for. The rating level of the plant noise and the background noise level shall be determined using the methods from the version BS 4142 current at the time of granting planning permission. b) Vibration from the plant hereby approved (when assessed as per advice of the version of BS 6472 current at the time granting of the planning permission) in the centre of any habitable room shall cause vibration no higher than the values equivalent to 'low probability of adverse comment' in accordance with BS6472 @Evaluation of Human Exposure to Vibration in Buildings'. 5 a) - Any gas-fired boilers installed within the development shall not exceed the maximum emission standard of <40mgNOx/kWh. b) Any gas-fired CHP plant installed within the development shall not exceed the maximum emissions standards of: - for spark ignition engine: <250mgNOx/Nm3 - for compression ignition engine: <400mgNOx/Nm3 - for gas turbine: <50mgNOx/Nm3. The boilers and plant shall be maintained so as not to exceed the relevant standards for the lifetime of the development.
 - The reasons given for the conditions are: 4: to ensure that the development does not result in noise disturbance to neighbouring residents in accordance with policies D.14 of the London Plan (2021) and D.DH8 and D.ES9 of the Tower Hamlets Local Plan (2020). 5: to manage and prevent further deterioration of existing low-quality air across London in accordance with London Plan 2021, NPPF 186, D.ES2 of Tower Hamlets Local Plan 2031 (2020).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Works approved as part of planning permission reference PA/22/00548 as referred to in the above banner heading have been completed onsite. At my site visit, I was able to see that the works that have taken place do not fully

accord with the approved drawings. I have therefore determined the appeal based on the plans the Council made its decision on.

3. Two original application forms have been submitted with varying information relating to the site location, applicant details and declaration date. I have therefore taken such information in the above banner heading from the appeal form.

Background

4. Planning permission was granted for proposed minor works to the harbourmasters office to include the installation of a boiler flue and additional exterior door. Two conditions controlling the level of noise disturbance associated with any mechanical plant and equipment as well as emission standards were imposed in the interests of residential amenity and air quality as set out in the banner heading. The proposed development seeks to remove condition 4 and 5 meaning that there would be no restrictions in terms of noise and emissions for the lifetime of the development.

Main Issue

5. The main issue is the effect that removing the conditions would have on the living conditions of neighbouring residents in relation to noise disturbance and on the air quality across London.

Reasons

6. The appeal site relates to a hexagonal building known as the Harbourmasters Office and is located at Limehouse Marina to the north of the River Thames. The building comprises three storeys providing facilities for those using the marina including shower and washing facilities. The surrounding area is characterised by residential, commercial and leisure uses.
7. A previous retrospective planning application was submitted under reference PA/18/02013 relating to the installation of a boiler flue. However, this was refused due to concerns relating to character and appearance and residential amenity of neighbouring occupiers in terms of noise, vibration and odour. In light of this, the appellant sought to remove the original flue and replace it with a flue that is in keeping with the building aesthetics and would not encroach on neighbouring amenities.
8. A subsequent application was then submitted consisting of proposed minor works to the harbourmasters office to include the installation of a boiler flue and additional exterior door. This description of development does not appear to be disputed and it is clear from the supporting information that the works proposed involved the relocation of boiler flue and implementation of rear door providing access to ELSAN room. This proposed development was approved and is the subject of the current appeal in relation to conditions 4 and 5.
9. As part of the aforementioned application, the position of the boiler flue was determined by the appellant as the most appropriate location to accommodate a suitable extract position from the internal boiler. It would be located at the furthest point away from nearby residential properties. The approved plans show the location of the flue to protrude out from the sloped roof at first floor level.

10. At my site visit, I observed that the flue protruded out from the side elevation and up the outside of the roof. This differs to that approved. I am unaware of the planning circumstances that may have led to this. Nonetheless, the flue, in its current location, or that permitted by the previous planning permission would protrude out externally from the host building and thus would comprise both internal and external alterations to the building.
11. I appreciate that the internal alterations to the building did not form part of the application. However, the flue is an element that required planning permission. It was therefore appropriate to consider how this may affect the living conditions of the occupiers of neighbouring properties. Therefore, the fact that planning permission was not required for the internal works would not change my findings in relation to the external alterations. The length of time that the internal boiler has been in situ and the unchanged layout internally would also not change my findings on this.
12. I appreciate that the boiler flue is an extract vent that is being moved and that the appellant is not applying for consent for the boiler itself as this is already in situ and internal. I have also had regard to the officer's report which sets out that the Environmental Health team raise no concerns regarding the placement of the flue subject to conditions which include those subject to this appeal. In addition, whilst the officer's report acknowledges concerns raised regarding the ELSAN tank and accepts that this is located inside the building and is not 'development', this would not overcome the other comments from Environmental Health regarding the flue relating to noise disturbance and managing and preventing further deterioration of existing low-quality air across London.
13. Residential flats at 40-52 Goodhart Place are located within close proximity of the site and include balcony areas. The officers' report explains that there is a separation gap of approximately 3 metres. The proposed removal of condition 4 and 5 would mean that there would be no control over the level of noise and emissions associated with the flue. Given the external positioning and close proximity to neighbouring residents including their balcony areas where residents are likely to sit, the activities associated with the flue itself has the potential to impact living conditions in terms of higher noise levels and air quality at any time of the day including night-time if not adequately controlled hence the reason for the conditions.
14. I am aware of the provisions of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance in relation to conditions. Conditions 4 and 5 are considered necessary as they relate to controlling what would otherwise be unacceptable levels of noise and emissions in close proximity residential uses. They are also relevant to planning in this regard as they ensure that the development does not result in noise disturbance to neighbouring residents as well as managing and preventing further deterioration of existing low-quality air across London.
15. The conditions relate to the development permitted despite the boiler being located internally and are therefore relevant. The conditions set clear figures for the measurement of noise and emissions, and these could be enforced, if necessary. The flue element would comprise of mechanical plant and equipment despite the main boiler being located internally and condition 4 and 5 are therefore precise. For these reasons and, taking into account the use of

the building, the conditions in dispute are reasonable in all other respects and I am not persuaded that the conditions have been wrongly attached.

16. For the reasons given above, I conclude that the proposed removal of conditions 4 and 5 of reference PA/22/00548 would harm neighbouring residents in relation to noise disturbance as well as the potential to affect air quality across London. It would therefore conflict with Policy D.14 of the London Plan The Strategic Development Strategy for Greater London, 2021, Policies D.DH8, D.ES9 and D.ES2 of the Tower Hamlets Local Plan 20231, 2020 which together amongst other matters, requires development to not create unacceptable levels of artificial light, odour, noise, fume or dust pollution during the construction and life of the development whilst meeting or exceeding the 'air quality neutral' standard. The proposed removal of conditions 4 and 5 would also be contrary to paragraph 185 of the Framework relating to amongst other matters, the effects of pollution on health and living conditions.

Other matters

17. I appreciate that the proposed development would support the success and growth of the leisure operator and would improve and broaden the current offer available at the site. This would not however alter my findings on the main issue.
18. The site borders the Narrow Street Conservation Area (CA) and there are a number of listed buildings located within the vicinity. I have had regard to my statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and in addition, whether the significance of the CA as a designated heritage asset would be affected by development within its setting. However, the Council do not raise any particular concern in this regard. Based on the plans submitted and my own observations onsite, I have no reason to disagree. On this basis, the proposal would not result in harm to the significance of designated heritage assets in terms of their setting or similar.

Conclusion

19. The proposed development would conflict with the development plan as a whole. There are no other considerations that individually or cumulatively outweigh this harm and development plan conflict. The appeal should therefore be dismissed.

N Teasdale

INSPECTOR