



Appeal Decision

Site visit made on 13 September 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2023

Appeal Ref: APP/T5150/C/22/3304392

82 Willesden Lane, Kilburn, London NW6 7TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Masoud Harghandewal against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/21/0304, was issued on 25 July 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an extractor flue/fan/duct to the rear of the premises ("the unauthorised development").
 - The requirements of the notice are:
 - Step 1 – Completely remove the extractor flue/fan/duct at the rear, including the removal of all parts, fixings and equipment associated the extractor flue, from the premises.
 - Step 2 – Remove all items and debris, arising from the removal works, remove all materials associated with the unauthorised development from the premises, and ensure ensure of the full repair of the rear wall where the extractor flue/fan/duct formerly installed [*sic.*].
 - The period for compliance with the requirements is 1 month after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

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

Preliminary Matters

2. The appeal was originally made under ground (b). Given the nature of submissions made, the appellant was invited to provide further evidence to support an appeal under ground (d). While the appellant accepted that the appeal should proceed under ground (d), the ground (b) appeal was not formally withdrawn. I have, therefore, considered the appeal under both grounds. As the evidence from both parties in this case can be applied to considerations in respect of both grounds, no injustice will arise from my approach.
3. Under both grounds, the burden of proof is with the appellant and the history of discussions with Council officers, or reason for any complaints from local residents has little to do with the matters relevant to the grounds of appeal made.

Ground (b)

4. An appeal can be made under ground (b) on the basis that the matters alleged in the enforcement notice (the Notice) have not occurred. Photographic evidence indicates that a flue/duct of some form has been present at the

premises for some considerable time. The older photographs show a broadly square profile flue/duct. The more recent photographs indicate that there have been further changes to the form of the flue/duct.

5. Having regard to the above, there is clearly no dispute that the erection of an extract flue/fan/duct to the rear of the premises has occurred at some point prior to the issue of the notice. For this reason, the ground (b) appeal fails. Whether or not the flue/fan/duct is immune from enforcement action is a matter that is relevant to the ground (d) appeal.

Ground (d)

6. For success under ground (d), it must be shown that, on the balance of probabilities, the Notice was issued after the end of the period of four years beginning with the date on which the operations were substantially completed. The building operations in this case comprise the erection of an extractor flue/fan/duct.
7. Whilst there is no dispute that a flue/duct of some form has been present on the property for the last 20 years or so, I have noted above that there have been some variations to it over the years. Having regard to the evidence before me, the main considerations in this case are, firstly, whether these changes comprise new development (i.e. new operations) and, if so, whether or not a period of 4 years passed between its substantial completion and the issue of the notice.
8. At some point before 2018, the old square profile flue/duct was changed to the circular flue/duct. The circular flue had an entirely different appearance to its predecessor and so I find it to be a wholly new development. In 2019, the flue had the same appearance as in 2018, but since then, its simple form with a uniform, circular flue/duct extending up the rear wall of the building has been further modified to its current form, which is also shown in the most recent photographs prior to issue of the notice. It now has larger diameter circular and square profile components along its length.
9. It may well be that the modifications since 2019 were at the request of, or following discussions with, the Council. However, they are nevertheless further significant changes that I find, as a matter of fact and degree, to be yet more new development with a substantially different appearance. Therefore the existing flue was not substantially complete until these most recent works had taken place.
10. Having been undertaken at some point since the photograph dated April 2019, it is more likely than not that 4 years did not pass between its substantial completion and the issue of the Notice. Accordingly, the appeal under ground (d) also fails.

Conclusion

11. For the reasons given above, I conclude that the appeal does not succeed and I shall uphold the enforcement notice.

M Bale

INSPECTOR