



Appeal Decision

Site visit made on 18 September 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date 18 October 2023

Appeal Ref: APP/X5990/C/22/3310120

Land at 3-5 Kilburn High Road, London NW6 5SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Massoud Nami Rad against an enforcement notice issued by City of Westminster Council.
- The enforcement notice was issued on 28 September 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission and within the last 4 years the installation of metal ducting equipment to the southern flank elevation of the Property.
- The requirements of the notice are: 1. Remove the unauthorised ducting, and associated fixtures and fittings installed at ground, first and second floors on the flank elevation of the Property, shown outlined red in Photograph A attached; and 2. Repair any damage to the Property caused by the installation or removal of the ducting, and associated fixtures; and 3. Remove from the Property all debris resulting from compliance with requirements 1 and 2, cited above.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

The appeal on ground (a) and the deemed planning application (DPA)

Main Issues

1. The main issues are the effect on the character and appearance of the appeal building and area and on the living conditions of neighbouring occupants with regards to noise, fumes and odour.

Reasons

Character and appearance

2. Planning permission was granted at the appeal property in 2020¹ for 'Installation of full height vertical kitchen extract system within enclosure to side'. However, this was apparently not installed as approved; the Council outlines that the approved system was to be square metal ducting within a

¹ Reference: 20/05102/FULL ('2020 Permission')

brick slip cover and that the development as built is a round metal pipe with no brick casing, along with a large metal fan box.

3. The appeal property is in use at ground floor level as a restaurant, with residential accommodation above. It is a brick building of a simple and unobtrusive design which sits comfortably in the street scene. Whilst there are other commercial premises in the vicinity of the appeal site, the street scene is not generally visually cluttered with ducting or similar equipment.
4. The ducting and fan box are highly visible in the street scene due to the relatively large space between the appeal property and adjacent building. The size, height, metal finish and unsympathetic positioning of the ducting and metal fan box leads to a visual cluttering effect that is out of character with the appeal building and locality.
5. The appellant submits that any visual harm could be overcome by a planning condition requiring that the ducting equipment is encased in a matching brickwork slip cover similar to that in the 2020 Permission. I agree though with the Council that whilst a brick slip cover over the narrower vertical pipe would satisfactorily conceal this element, covering the fan box in this way would still result in a large, cluttering addition to the flank elevation given how far the fan box projects from the wall. This would be visually incongruous in public views. Covering the piping but leaving the fan box uncovered would also result in visual clutter out of character with the surrounding area.
6. For the reasons stated, even if conditioned as suggested, the appeal development would nonetheless cause harm to the character and appearance of the building and area. There is conflict in this way with Policies 38 and 40 of the Westminster City Plan 2019 -2040 ('City Plan') which requires that all development contributes positively to Westminster's townscape and streetscape and is sensitively designed. The appellant also refers to compliance with a number of other policies but the Council has indicated that these are no longer extant.

Noise, fumes and odour

7. The ducting and associated items attacked by the notice are located in close proximity to windows of residential properties at Vale House and Maple Mews. In this regard, the appellant submits that evidence related to noise and odour submitted in connection with the 2020 Permission should be applied to the appeal development.
8. The Council has highlighted though that the system installed is not that which was approved pursuant to evidence submitted in connection with the 2020 Permission. As such, I cannot rely on the 2020 Permission evidence in considering the equipment enforced against.
9. The appellant comments that the kitchen extract duct rises over one metre above roof level and that no nearby residential windows are above the discharge point. However, the appellant's own Odour Impact Assessment Report in relation to the 2020 Permission extraction system emphasises that the type of cooking in the appeal property restaurant has a 'high odour potential and produces a high grease content and a very high smoke content in the discharge air'; on this basis it was assessed that 'a high level of odour control' was necessary even taking into consideration a high discharge point.

10. Thus, I cannot be satisfied that a high discharge point is enough to mitigate against potential harm since I have no detailed information in relation to the operation and efficacy of the system enforced against. Equally, as regards noise, the previous Noise Impact Assessment indicated that the extraction fan motor on the approved system was to be located internally, and so data from this report is not applicable to the present system in place where there is an external fan box. The appellant indicates also that the Environmental Health Manager has raised no objection to the works, subject to standard noise restriction conditions. However, no detailed evidence confirms this nor the basis for that assessment.
11. For these reasons, on the available evidence, I find that the appeal development has a harmful impact on the living conditions of neighbouring occupants with regards to noise, fumes and odour. There is conflict in this way with Policies 7, 33 and 38 of the City Plan which seek to ensure that new development is neighbourly and ensures a good standard of amenity and strives to protect against adverse local environmental impacts on existing occupants including as regards noise. It is contrary also to Policy D14 of the London Plan 2021 ('London Plan') which seeks to guard against significant noise impacts. The Council has not identified how there is a failure to comply with London Plan Policy S1 which relates to developing social infrastructure.

Other Matters

12. The appellant makes submissions related to the importance of the ducting system to the operation of the restaurant business, along with related economic and social benefits. I can though only accord this very limited weight in favour of the current system bearing in mind that there is no substantive evidence to indicate that the present system could not be replaced with a system that is less visually harmful and with proper mitigations against noise, fumes and odour pollution. Submissions in relation to the environmental benefits of the current system are not supported by any substantive evidence.

Conclusion

13. The appeal development results in material harm to the character and appearance of the area which cannot be overcome by the imposition of conditions. On the evidence before me, I also cannot be satisfied that there is not significant resultant harm to the living conditions of neighbouring occupants. The development therefore results in conflict with the development plan, read as a whole and no material considerations are advanced of such weight as to indicate a decision other than in accordance with the development plan. In view of the fundamental harm found, the development does not represent the sustainable development in respect of which the National Planning Policy Framework creates a presumption in favour.
14. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

15. 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.

V Bond
INSPECTOR