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## Appeal Decision

Site visit made on 12 June 2024

**by P B Jarvis BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 July 2024**

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### **Appeal Ref: APP/U5360/W/23/3335944 34 Chatsworth Road, London E5 0LP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Tony Manconi against the decision of the Council of the London Borough of Hackney.
  - The application Ref is 2023/2131.
  - The development is extraction flue system to rear.
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### **Decision**

1. The appeal is allowed and planning permission is granted for extraction flue system to rear, at 34 Chatsworth Road London E5 0LP, in accordance with the terms of the application, Ref 2023/2131, subject to the following conditions:
  - 1) The development hereby permitted relates to the following approved plans: CHS 34/23/01 (pre-existing site plan and ground floor plan), CHS 34/23/02 (pre-existing first floor plan), CHS 34/23/03 (pre-existing side elevation, Dunlace Road), CHS 34/23/04 (pre-existing side elevation), CHS 34/23/05 (Location Plan), CHS 34/23/06 (existing & proposed ground floor and first floor plan), CHS 34/23/07 (existing & proposed side elevation, Dunlace Road), CHS 34/23/08 (existing & proposed side elevation).
  - 2) Within three months of the date of this decision a scheme for the installation of a flue housing shall have been submitted for the written approval of the Local Planning Authority. The scheme shall include a timetable for its implementation and the flue housing shall be installed in accordance with the approved scheme and retained as such thereafter.
  - 3) The rated aggregate noise level from the equipment hereby approved shall be 10dB(A) or more below the measured LA90 level at the façade of the nearest noise sensitive premises and 5dB(A) or more from the façade of the nearest office. The method of assessment shall be carried out in accordance with BS4142:2014 'Methods for rating industrial and commercial sound.'
  - 4) The extraction flue system shall be operated and maintained at all times in accordance with the recommendations of the Odour Management Plan, dated September 2023, produced by Delta Tech Ltd.

### **Main Issues**

2. The main issues are the effect on:

- The character and appearance of the area
- The living conditions of the occupiers of the adjacent property by reason of odour.

## Reasons

3. The appeal site lies on the east side of Chatsworth Road on the southern corner of its junction with Dunlace Road. It comprises of a three-storey building with restaurant use on the ground floor and residential accommodation above. To the rear are single storey extensions containing the restaurant kitchen and other areas and a small yard area accessed via a gate off Dunlace Road with a high wall otherwise marking the side boundary. There is an external staircase giving access to the flat roof area above the single storey addition which is enclosed by a wall and trellis and which provides access and an amenity area for the first floor flat. The appeal site is part of the local centre with a number of other commercial premises on the ground floor of the terrace fronting Chatsworth Road. Dunlace Road is a residential street of modest two storey terraced properties.

### *Character and appearance*

4. The extraction flue, which is already in place, is located to the rear of the premises above the roof of the single storey addition within the enclosed flat-roofed area, adjacent and fixed to the side wall of No. 79 Dunlace Road. It is set back about halfway along the flank elevation of the property but is visible from the western end of Dunlace Road though not from Chatsworth Road.
5. Planning permission was granted in 2014<sup>1</sup> for a flue at the rear of the premises though the Appellant confirms that the existing flue is in a slightly different position due to it having to be relocated because of boundary issues. It also appears that the previously approved flue was, originally, partially screened by a first-floor addition, but that has since been removed. The overall height of the flue has increased due to it now having a 'silencer' cap and it has a slightly wider element towards its base which is partially enclosed within a timber housing. I noted that there are other premises within the area with similar flues albeit not in exactly the same position or of the same design.
6. Having regard to the above, whilst the new flue is larger and positioned slightly closer to the Dunlace Road frontage, it does not have an unacceptably greater visual impact, albeit does appear somewhat starkly against the brickwork elevation. Whilst it is a more prominent and visible feature than the earlier approved flue, the lower section is partially screened by the wall and trellis at first floor and the timber housing that has been installed at the lower level. The Appellant has suggested that the visual impact of the exposed part of the flue could be further mitigated by the use of a 'flue housing' in a material that has the appearance of brickwork to match the existing; this could be secured via condition. In these circumstances and given that the flue is only seen in a fairly limited view along that part of Dunlace Road directly opposite the appeal site, I consider that the flue would have an acceptable appearance.
7. I therefore find that the development does not have a harmful impact on the character and appearance of the area. The development would thereby comply with Policy LP1 of the Hackney Local Plan LP33 (2020) (HLP) and Policies D3

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<sup>1</sup> Council ref: 2014/4222

and D4 of The London Plan (LP) which seek development of high quality that responds to local character and context.

*Living conditions*

8. The appeal application was accompanied by an Odour Management Plan (OMP) which has assessed the impact of the current methods of cooking and concludes that provided its recommendations are taken into account, there should not be a loss of amenity for existing residential receptors in the vicinity of the extractor as long as the systems recommended in it are implemented using 'best practical means'. This includes the installation of extra filtration to mitigate the effects of the type of food cooking undertaken and proper maintenance of the system on a regular basis in accordance with the detailed maintenance programme set out.
9. The Council's Environmental Protection Team highlights that the above OMP classified the odours produced on the premises as 'high' but other than noting the proximity of the nearby residential properties and that the flue will not terminate one metre above the roof of the nearby residential unit, does not comment on the other findings or recommendations of the report. No further technical evidence to support the contention that the extraction flue is therefore causing harm is provided nor is any specific policy or guidance in this respect referred to. In this regard I note that the flue is of a similar height and position to that previously approved. I do note, however, that adjoining residents have raised issues in this respect.
10. Notwithstanding the above, given that the OMP recommends additional measures to mitigate any odour impacts that may be arising, provided a condition is imposed to ensure that the recommendations of the OMP are carried out, to include regular maintenance checks, these impacts could be mitigated to an acceptable level. In these circumstances I find that the development would not have a harmful impact in respect of odour.
11. I note that local residents are also concerned with regard to the noise impact of the flue and that this has caused a disturbance in the past. However, the Council has confirmed that, on the basis of the submitted noise report, it is satisfied that subject to the imposition of a condition, these impacts will be acceptable. I have no reason to disagree. The Council will be able to consider taking any action as appropriate should the condition not be complied with.
12. Overall, there would be no unacceptable impact on the living conditions of the occupiers of nearby properties. The development complies with HLP Policy LP2 and LP Policy D3 which seek to ensure that development is appropriate to its location and designed to ensure no significant adverse impacts on the amenity of occupiers and neighbours and deliver appropriate amenity.

**Conclusion**

13. For the above reasons I conclude that the appeal should be allowed and planning permission granted.

*P B Jarvis*

INSPECTOR