



Appeal Decision

Site visit made on 9 July 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2024

Appeal Ref: APP/X5210/W/24/3343266

76 Neal Street, Covent Garden, London WC2H 9PA

- 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 Morad Arefin on behalf of DOW Properties Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref is 2023/3319/P.
 - The development proposed is installation of ventilation system – kitchen – bakery activity at basement floor & relocation extra flue duct to the rear-side elevation.
Conversion small area at basement (7.04sqm) to be a primary cooking area.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Morad Arefin, on behalf of DOW Properties Ltd, against the Council of the London Borough of Camden.
This application will be the subject of a separate decision.

Main Issues

3. The main issues are:
 - whether or not the proposed development would preserve or enhance the character or appearance of the Severn Dials (Covent Garden) Conservation Area; and
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular regard to the flats in the upper floors of 76 Neal Street and with regard to odour.

Reasons

4. 76 Neal Street lies within the Severn Dials (Covent Garden) Conservation Area. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ('the Act') provides, at section 72(1), that with respect to any buildings or other land, in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character, or appearance of that area.
5. The Camden Conservation Area Statement for Severn Dials (Covent Garden) (the CAS) details the historic development of the area and the characteristics which are of special architectural or historic interest. Insofar as it is relevant to the appeal, I consider that the significance of the conservation area is mainly derived from the street layout and the range and mix of building types and

- uses. The area has a dense, urban, feel with tight-knit terrace buildings, built at back of pavement, on narrow plot widths of a fairly consistent scale which contribute positively to the character and appearance of the conservation area as a whole.
6. The area has transformed into a mixed use area with residential, retail, business, and restaurant use. Many of the ground floors retain their single plot width and thereby provide small units and greater interest at ground floor.
 7. 76 Neal Street is noted in the CAS as a building which makes a positive contribution to the Conservation Area. It is a five-storey building with a retail unit at the ground floor and four residential floors above, served by a separate entrance door. The basement, which is the subject of this appeal, was, at the time of my visit, in use for storage for the retail unit. At the rear of the property is an enclosed staircase, an open staircase, and the terrace garden of the residential property at first floor. The rear elevation of the building includes several window openings serving the residential properties on the upper floors.
 8. The proposal is for the installation of a ventilation system at the rear of the property to serve a kitchen/bakery in part of the basement. The proposal would locate the flue at the rear of the building.
 9. Although the appellant revised the position of the flue so that most of it would be within the enclosed staircase, in order to overcome objections from a neighbouring property, the submitted plans continue to show a section of flue which would extend some way above the roof of the staircase. The flue would, therefore, be visible and prominent within the Conservation Area, from several properties surrounding the site, including from gardens. Such a flue would fail to preserve or enhance the Severn Dials Conservation Area, as required by Policy D2 of the Camden Local Plan 2017 (the LP).
 10. The appellant has also amended the scheme to clad the upper section of the flue in brickwork so as to appear as a chimney. Although both of the amendments were received by the Council as part of the process of the planning application the Council's receipt of the amended plans does not equate to their acceptance of the proposal. The positioning of a brick chimney, to the height that would be required to enclose the section of flue above the staircase, would be incongruous and an alien feature in this area where chimneys are at rooftop level rather than on lower sections of buildings.
 11. The appellant has drawn my attention to other flues in the immediate area, some of which were visible from the rear of the property during my visit. However, I do not have the full details of those developments and whether they have planning permission. The decision notice for 2 Neal's Yard¹ has been submitted without any plans to show the visual appearance of this scheme. However, I note that condition two requires materials that resemble the existing building. Consequently, it is likely that the duct approved at 2 Neal's Yard is materially different to the appeal before me.
 12. The introduction of prominent air handling units/ducting is noted in the CAS as a cause of harm to the Conservation Area. Although there are other flues in the area this would not justify further harm. Moreover, the other flues I saw at my

¹ Council reference 2017/1655/P

visit were, in the most, attached to the rear elevations of the main building, rather than part of a lower and later addition.

13. I do not have substantive evidence to show, as the appellant contends, that a flue could not be installed on the rear elevation of the main part of 76 Neal Street and discharge above the level of the windows. However, I am also duty bound to consider the appeal before me and not some theoretical other scheme.
14. The position and height of the flue, even as amended to be within the staircase and enclosed in brick cladding above the staircase, would be inappropriate in the Conservation Area. The harm to the Conservation Area would be less than substantial. In accordance with the Framework, great weight should be given to the conservation of the heritage assets. Paragraph 208 of the Framework advises that less than substantial harm should be weighed against the public benefits of the proposal.
15. Whilst the introduction of a new use to Neal Street would be a benefit, as would the increase in employment, these benefits would be limited. Moreover, I have no substantive evidence that an alternative use could not be found for the basement space which would introduce a new use and provide employment opportunities whilst not requiring the installation of a ventilation system and, therefore, not adversely affecting the conservation area.
16. The Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm. The public benefits of the proposal are afforded limited weight and, therefore, would not outweigh the harm to Conservation Area and its significance.
17. For the above reasons, the proposed development would not preserve nor enhance the character or appearance of the Severn Dials (Covent Garden) Conservation Area. It would, therefore, be contrary to Policies D1 and D2 of the LP which, taken together seek to secure high quality design which respects local context and character, comprises details and materials that are of high quality and complement the local character, carefully integrates building services and equipment, preserves, or enhances the historic environment, and resists development that results in harm that is less than substantial unless the public benefits convincingly outweigh the harm.

Living conditions

18. The top of the flue would be at a similar height to the second landing of the external staircase. This would, therefore, be above the windows of the first and second floor flats but below the windows of the flats above second floor. Any odour discharge from the flue would have the potential to affect the living conditions of these flats as the flue would discharge odour at and below their window level.
19. Although the proposal includes a carbon filter and odour system controls the appellant has not provided sufficient detail of these features to clearly show that the extract system would not result in odour discharge from the top of the flue. Such odour discharges would adversely affect the living conditions of the occupants of the neighbouring flats in the upper floors of 79 Neal Street. I,

therefore, cannot be certain that the development would comply with Policy A1 of the LP which, amongst other matters, seeks to ensure that development would not harm the living conditions of neighbouring residents, including considering odour.

20. A comprehensive odour assessment, once carried out, may require further amendments to the height, size, or position of the flue and it is not possible to know the implications of any changes without the assessment. Consequently, and notwithstanding the comments from interested parties submitted in the appellant's evidence, it would not be appropriate for me to impose a condition to require the submission of an odour assessment. Such a condition would not be reasonable and would, therefore, fail the tests for conditions.
21. For these reasons, I cannot be certain that the proposed ventilation system would not adversely affect the living conditions of the occupiers of neighbouring properties with particular regard to the flats in the upper floors of 76 Neal Street and with regard to odour. The development would, therefore, be contrary to Policy A1 of the LP as noted above.
22. The Council's second reason for refusal also refers to Policy D1 of the LP. However, Policy D1 relates to design considerations of a proposal and does not specifically include any reference to consideration of the living conditions of neighbouring properties. I, therefore, consider that Policy D1 of the LP is not relevant to this main issue.

Other Matters

23. That sufficient information has been provided, in the form of the revised Noise Impact Assessment, to ensure that the development would not adversely affect the living conditions of neighbouring properties with regard to noise, would not overcome the harm I have identified to the Conservation Area and the harm to living conditions from odour.
24. The appellant has also referred to the time taken for the decision to be made and the lack of communication with the Council; however, the conduct of the Council does not affect my findings on the main issues.

Conclusion

25. For the reasons given above the appeal should be dismissed.

K Townend

INSPECTOR