



Appeal Decisions

Site visit made on 20 August 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal A Ref: APP/K0940/C/23/3335802

The Land known as George and Dragon Inn, Clifton, Penrith CA10 2ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by CIEL Hotels Ltd against an enforcement notice issued by Westmorland and Furness Council.
- The notice was issued on 20 November 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of replacement kitchen extractors, air supply units and flues.
- The requirements of the notice are:
 - Remove the replacement kitchen extractors, air supply units, flues and associated structures attached to the external walls to the rear elevation of the George and Dragon, Clifton, Penrith CA10 2ER.
 - Restore the external walls to the rear elevation of the George and Dragon, Clifton, Penrith CA10 2ER to their former condition prior to the installation of the replacement kitchen extractors, air supply units, flues and associated structures.
 - Install the kitchen extract equipment in accordance with the approval granted under planning application 08/0714.
- The period for compliance with the requirements is:
Four calendar weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: Appeal A is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/K0940/W/23/3335271

George & Dragon, Clifton, Penrith CA10 2ER

- 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 CIEL Hotels Ltd against the decision of Westmorland and Furness Council.
 - The application Ref is 23/0407.
 - The development proposed is Replacement kitchen extract, air supply units and flues (retrospective).
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Formal Decisions

Appeal A

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the installation of replacement kitchen extractors, air supply units and flues at the land known as George and Dragon Inn, Clifton, Penrith CA10 2ER as shown on the plan attached to the notice and subject to the conditions set out in the attached Schedule of Conditions.

Appeal B

2. The appeal is allowed and planning permission is granted for replacement kitchen extract, air supply units and flues at George & Dragon, Clifton, Penrith CA10 2ER in accordance with the terms of the application, Ref 23/0407, dated 13 June 2023, subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

3. The application for planning permission was submitted retrospectively in 2023 to retain a replacement kitchen extract, air supply units and flues at the rear of the George and Dragon Inn. These had been installed as part of a refurbishment of the public house and its kitchens following a fire. The planning application was refused and an enforcement notice was subsequently issued. The appeal against the enforcement notice is appeal A whilst the appeal against the refusal of the planning permission is appeal B.
4. The application for planning permission was refused for two reasons, those essentially being the effects of the scheme on the amenities of neighbouring residents with particular regard to noise and disturbance, and to odour. The refusal reason also makes reference to the effect of the scheme on the character and appearance of the built environment but does so without expanding on what that harm is or how it arises and only in the context of it not having been demonstrated how harm could be avoided.
5. In addition to reference to the effect of the enforcement appeal scheme on the living conditions of occupiers of nearby residential properties, the enforcement notice is more specific in its reference to the effect of the extraction scheme on character and appearance of the appeal building and surrounding area. Thus, in the reasons for issuing the notice, reference is also clearly made to the scale and appearance of the extraction system and its effect on the character and appearance of the local built environment.
6. As the appeal against the enforcement notice has been made on, amongst other grounds, ground (a) an application for planning permission is deemed to have been made for the kitchen extractors, air supply units, flues and associated structures. Furthermore, the planning application the subject of appeal B sought to retain the kitchen extractors, air supply units, flues and associated structures as installed, and that the Council has subsequently enforced against. I am satisfied therefore that the appeal schemes under ground (a) of appeal A and that of appeal B are not materially different and I shall, unless otherwise stated, consider the matters together. I am also satisfied that, despite the slight differences in the given wording to the appeal site address, the appeal schemes and appeals relate to the same site and this is reflected in my decision.
7. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. I am satisfied that, other than changes to paragraph numbering and paragraph structure between the current and previous versions of the Framework, the sections relevant to the matter before me have not materially changed. I have determined the appeal accordingly and in so doing I am satisfied that neither main party would be disadvantaged.

Main Issues in respect of appeal A (ground (a)) and appeal B

8. Having regard to the matters set out above, the main issues in relation to both appeal A (ground (a)) and appeal B are the effects of the appeal scheme upon:
- The living conditions of occupiers of nearby residential properties, with particular regard to noise and odours; and
 - The character and appearance of the surrounding area.

Reasons

Living conditions - noise

9. The appeals were accompanied by noise assessments, including an assessment providing further clarification of the survey work and conclusions drawn from it. The survey work included the use of monitoring equipment at the rear of the appeal site, calculation of exposure to noise at the closest receptors and the use of previous (albeit of some age) survey results nearby to provide context and comparable baseline figures.
10. The assessments conclude that the extract systems could operate within the envelope of prevailing evening background noise levels. The survey reports note the difference between kitchen operation and kitchen service time periods, most notably in relation to the kitchen operating before service times for the restaurant for preparation purposes. It is less likely that preparation works requiring the operation of the extract system would be required after the service period at the end of the day. Thus, a suitably worded condition could ensure that the extract systems are switched off, and thus not operational, during the night time period when background noise levels are understandable lower and more likely to be influenced by the M6 motorway than the appeal premises.
11. The Council are concerned that compliance with planning conditions imposed on the grant of planning permission through an appeal has the potential to modify the development in a way that would make it substantially different from that set out in the application. As a consequence, such circumstances would not allow for publicity and notification to be carried out. However, this point has not been expanded upon and, in any event, the submitted noise assessments conclude that the operational system would not cause unacceptable levels of harm through noise and that further modification regarding noise would not be required. As such, there would be no conflict with ELP Policy ENV9.

Living conditions - odours

12. The appeal premises accommodates a commercial kitchen which operates throughout the day to prepare for, or service, food service periods. Within the kitchen there are two preparation areas, each of which has its own external extraction flue but served by a single clean-air intake system.
13. The appellant has submitted considerable technical evidence with both appeals in respect of the control and mitigation of both noise and odour arising from the operation of the kitchen and the extraction systems. The submissions in respect of odour control are clear that the kitchen was operational during all

three assessment visits and that the mitigation measures were designed to be fitted retrospectively.

14. Those mitigation measures, and particularly the fitting of the 'ON100' system, have been based upon the assessment, findings and conclusions of the assessment visits. Whilst the Council's submissions indicate that there remain some uncertainties regarding the proposals, it seems to me that the appellant's submissions either take these factors into account, address them or that a suitably worded planning condition regarding the fitting of the odour abatement system (ON100) would be sufficient to provide adequate control.
15. In respect of odour control and mitigation therefore, I am satisfied that the appellant has adequately demonstrated that the extract system as fitted, together with the mitigation measures indicated based on the internal fitting of the ON100 units secured by way of planning condition, would significantly reduce and thus mitigate the emissions of odour associated with a commercial kitchen. It would do so to levels that would minimise residents' exposure to odour and avoid unnecessary harm to the living conditions of those nearby residents. Whilst I have carefully considered the nature and tone of the concerns expressed by nearby residents with regard to odours and the operation of the extract systems prior to (and after) the service of the notice and the refusal of the retrospective planning application, these relate to the operation of the system without specific attenuation and mitigation measures.
16. Furthermore, as these mitigation measures would be fitted internally to the systems, the Council's concerns as noted above in respect to noise, would not be realised. For the reasons set out above, there would be no conflict with ELP Policy ENV9.

Character and appearance

17. The extraction system is comprised of three distinct external elements; two vertical discharge flues, both of which are connected to horizontal ducting incorporating fan units principally at first floor levels, and separate intake ducting. The ground (a) appeal and the appeal B scheme seek to retain this existing arrangement at the rear of the building.
18. When viewed from the rear, and from the residential properties at the rear of the appeal site, the ducting, flues, cowls and intakes are incongruous and stark additions at the rear of the building. The Council describe these features, collectively, as being 'discordant and industrial style appendages' on the building. The appeal property is however a busy, commercial premises. It is more than just a pub as a drinking establishment. Rather, it is a public house with guest rooms and a commercial kitchen, as such, extensive intake and extraction systems are not uncommon.
19. Whilst I accept that the ducts are stark and incongruous when viewed from the rear, I do not share the Council's concern as to the extent of their wider visibility. Rather, the intake ducting that is visible from beyond just the adjacent houses, is seen between buildings and across intervening fences and garden vegetation. Moreover, this is from some distance and from the junction of Cumberland Close with the main road through the village. Those views are neither obvious nor prominent and are instead rather more fleeting in their nature.

20. Whilst the ducting, flues and fan units are not particularly pleasing to the eye they are an inevitable element of a modern, commercial kitchen. Furthermore, the very nature of these functional elements makes them difficult to disguise. Whilst I have some sympathy for residents whose properties back on to the rear of the appeal site and their outlook from the rear of their properties is towards the rear of the public house, the visual impact of the scheme is largely limited to those receptors.
21. Nevertheless, because of the scale, extent and untreated bare metal surfaces of the network of flues, ducts and other elements of the extraction system, they form an unpleasant feature at the rear of the property. This, I accept, causes harm to the character and appearance of the appeal property and the surrounding area. However, whilst it may not be feasible to significantly change the actual shape of the scheme's various elements, simple steps could be taken to minimise the somewhat stark nature and appearance of it.
22. The Council have suggested that a matt black powder-coating could be applied to the ducting as part of their suite of suggested conditions. Whilst I am not persuaded that a black finish would have a recessive impact on the metalwork in the context of the building's cream-coloured rendered walls, a suitably worded planning condition could ensure the application of a more appropriate colour shade. Subject to such an approach, I am satisfied that the appeal schemes set out in the ground (a) appeal in respect of appeal A, and in respect of appeal B, would not cause harm to the character or appearance of the appeal property, or of the surrounding area. There would not, as a consequence, be any conflict with ELP Policy DEV5.

Conditions

23. I have carefully considered the conditions suggested by both main parties in the context of the Framework and Planning Practice Guidance. In the interests of the living conditions of occupiers of nearby residential properties, a condition requiring the fitting of odour control units is necessary and reasonable, the details of which were set out in the appellant's Statement of Case. A period of 3 months from the date of this decision is also a proportionate period of time within which to carry out that requirement. I have however rephrased the wording of the suggested condition to reflect the essentially retrospective nature of the matters to which it applies.
24. Conditions relating to maximum noise levels and the hours during which the extract system shall not be operated are also necessary and reasonable in the interests of living conditions. Although I do not share the Council's view as to the suggested colour, a condition to require an appropriate colour finish to the extract ducting is required in the interests of character and appearance and the satisfactory appearance of the development. Additionally, in respect of appeal B I have set out a plans condition.

Other Matters

25. Local residents object to the appeal scheme on a wider basis, including effects upon property values, noise from other operations at the appeal site unconnected with the extraction systems, noise from patrons of the appeal premises, the nature of and 'target audience' for the appeal premises' food and accommodation offer. However, devaluation is not a material planning consideration to which I can attach any significant weight. Nor are matters

relating to the nature of the food and accommodation offer provided by the appellant's business and how they are perceived by locals material considerations to which I can attach any significant weight. Noises arising from sources other than those the subject of either the notice (appeal A) or the application scheme (appeal B) are not matters before me.

Conclusion

26. For the reasons given above, I conclude that appeal A succeeds on ground (a). I shall grant planning permission for the installation of replacement kitchen extractors, air supply units and flues as described in the notice. The enforcement notice will be quashed and in these circumstances the appeals on grounds (f) and (g) do not fall to be considered.
27. It is also concluded that, for the reasons set out and having considered all other matters raised, appeal B should succeed.

G Robbie

INSPECTOR

Schedule of Conditions Appeals A and B

- 1) Unless within 3 months of the date of this decision a scheme for the fitting of Purified Air ON 100 Odour Control Units to each of the kitchen cook lines and a scheme for the painting of kitchen extractors, air supply units and flues, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the kitchen extractors, air supply units and flues shall cease and the operation of the commercial kitchen shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the kitchen extractors, air supply units and flues shall cease and the operation of the commercial kitchen shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained in accordance with good practice and the manufacturer's recommended guidelines.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The rating level of the noise emitted from there hereby approved kitchen extract shall not exceed the existing background noise level, determined to be 45dBa L90 [free-field], by more than 5dB during operational hours. The measurements and assessment shall be made according to BS4142:2014 and A1:2019.
- 3) The kitchen extractors, air supply units and flues hereby approved shall not be operated on the premises between the hours of 22:00hrs and 07:00hrs.

Additionally, in respect of Appeal B

- 4) The development hereby permitted shall be carried out in accordance with drawings: Location Plan (date produced 14-Jun-2023); PO1065-1 Rev 0 and PO1065-3 Rev 0 except in respect of the details to be submitted in respect of condition 1.

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