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## Appeal Decision

Site visit made on 19 May 2025

by **Siobhan Watson BA(Hons), MCD, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

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### **Appeal Ref: APP/C5690/C/23/3318976**

### **200 Deptford High Street, London, SE8 3PR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Mr Nezamuddin Marzee (Lewisham Lebanese Grill Ltd) against an enforcement notice issued by the Council of the London Borough of Lewisham.
  - The notice was issued on 22 February 2023.
  - The breach of planning control as alleged in the notice is: Without planning permission, the installation of an extraction system, including ducts, flues, extraction units and supports.
  - The requirements of the notice are to: (1) Remove the extraction system (including ducts, flues, extraction units, and any supporting structure) in its entirety; (2) Make good all damage resulting from the compliance with the requirements of step (1); and (3) Remove all materials, debris, waste and equipment resulting from compliance with steps (1) and (2) of this notice from the land.
  - The period for compliance with the requirements is: 3 months.
  - The appeal is proceeding on the grounds set out in sections 174(2)(c) and (d) of the Town and Country Planning Act 1990 (as amended).
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### **Decision**

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

### **Preliminary Matters**

2. The Appellant has only ticked ground (c) on the Appeal form but has since said that he thinks ground (d) is appropriate. I will consider the Appeal on both grounds.

### **The Appeal on ground (c)**

3. An Appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control.
4. The Appellant says that only a section of the extraction system has been replaced, i.e., what exists is a repaired extraction system and not a new extraction system.
5. There have been representations from several third parties. One of which confirmed that the upper part of the flue, which they said is caked in blackened fat, has never been cleaned in 20 years. I could see this blackened part at my visit and it was a contrast to a newer and cleaner looking part underneath it. Therefore, I accept that not all of extraction system was installed at the same time.
6. However, even if the cleaner part is the part that the Appellant claims is a recent repair, it forms the majority of the external system. The blackened part is shorter and narrower than the rest of the extraction system. I have no firm details of what the flue looked like before the works.
7. The best the Appellant has come up with, as evidence of a flue, is an architectural drawing of the rear of the building. The flue on the drawing is materially different to

what I saw at my visit. The one I saw is much thicker on the cleaner/newer part than is shown on the drawing. The newer part covers much of the first floor window, unlike the flue in the drawing. In addition, the drawing does not contain the other lower parts of the extraction system which are currently attached to the cleaner part of the flue. The drawing shows an elongated flue where those parts are now. Therefore, as the drawing shows an extraction system which is materially different to the one that exists now, it does not assist the Appellant's case that the works to the extraction were simply a repair.

8. Overall, I consider that as a matter of fact and degree, the extraction system constitutes a new structure and is development requiring planning permission under S.55 (1)(1A) of the Act.

9. The Appeal therefore fails on ground (c).

### **The Appeal on ground (d)**

10. A ground (d) Appeal is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In this case the relevant period is 4 years from the substantial completion of the development. The 4-year period must have occurred before the enforcement notice was served. The onus of proof is on the Appellant.

11. The Appellant has submitted architectural drawings of the rear of the building showing the extraction system. However, I have already found that these drawings do not represent the extraction system that currently exists.

12. In respect of other evidence submitted by the Appellant, the submitted floorplans do not show the extraction system. He has also submitted photographs of a conservatory and the front of the property but these do not show any extraction system either. He has also sent a letter from Lewisham Council dated 23 August 1995 acknowledging an application for planning permission at the property but there is no description of development on the letter. There is also a letter from the London Borough of Greenwich Building Control Section dated 16 January 1991 which says that plans were passed for an extension, access staircase and shopfront but there is no mention of an extraction unit. In any event, the Appellant says that the works he carried out occurred much later than the date of these letters.

13. The appellant has supplied a handwritten receipt from Star Metal and Shutter dated 14 July 2017 which reads *"500 woods fan supplied and installed"* and *"500 silencer installed to system and some ductwork was done..."*

14. There is also a second receipt from the same company dated 15 July 2017 stating *"Old extraction system has been serviced and repaired."*

15. In respect of these receipts, the Officer Report says *"On 16th December 2022, Mr ... emailed the officer informing him that their client was in the process of obtaining a duplicate invoice from the company that serviced the units and they will require more time."* It therefore appears that those receipts dated 2017 are not original. The Officer Report also says that Officers researched Star Metal & Shutter and found that the company specialises in roller shutters and does not maintain

extraction units. The Appellant has not disputed the Council's claims in this respect. For these reasons I give little weight to the receipts.

16. Furthermore, even if the receipts are genuine, there are no drawings or technical details of the alleged 2017 repair work. It is therefore not clear what structures resulted from those works, if they occurred. Moreover, any maintenance done then does not mean that works have not been carried out since.
17. The neighbours reported that the current extraction unit went into operation in spring 2020. The alleged breach was reported to the Council in 2020. Furthermore, the complainant stated that the "*new extraction fan*" had been installed "*recently*". The appellant claims the works were done in 2017 but it is unlikely that a complainant would wait 3 years before reporting a breach, and 2017 was not "*recently*" in Spring 2020.
18. The appellant says that he provided a letter from a neighbour to use as proof that the extraction system is immune from enforcement action. However, this has not been provided as part of this Appeal. I note that it was provided to the Council. The Council said in the Officer Report that they had responded to the appellant's representative explaining that the statement from the neighbour is insufficient as evidence.
19. For the above reasons, and, on the balance of probability, the evidence does not precisely and unambiguously demonstrate that, as a matter of fact and degree, the development was not substantially completed within 4 years of the date of the notice. Therefore, I conclude that the ground (d) appeal fails.

### **Conclusion**

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

*Siobhan Watson*

INSPECTOR