
Appeal Decision

Site visit made on 10 January 2014

by K E Down MA (Oxon) MSc MRTPI MBS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 January 2014

Appeal Ref: APP/X5210/A/13/2202108

Ginger and White, 2 England's Lane, Belsize Park, London, NW3 4TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Tonia George against the decision of the Council of the London Borough of Camden.
 - The application Ref 2013/0761/P, dated 5 February 2013, was refused by notice dated 4 April 2013.
 - The development proposed is a low level extraction system and enclosure to the rear commensurate with existing use within conservation area.
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Application for Costs

1. An application for costs was made by Ms Tonia George against the Council of the London Borough of Camden. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for a low level extraction system and enclosure to the rear commensurate with existing use within conservation area at Ginger and White, 2 England's Lane, Belsize Park, London, NW3 4TG in accordance with the terms of the application, Ref 2013/0761/P, dated 5 February 2013, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan and the plans prepared by Just Plans entitled: Existing Plans – 2013-02-05; Proposed Plans – 2013-02-05; and Mechanical Services and Housing Detail – 2013-02-05.
 - 3) Noise levels from the equipment hereby approved when measured at a point 1 metre external to sensitive facades shall be at least 5 dB(A) below the existing background measurement (LA90), expressed in dB(A), when all plant/equipment (or any part of it) is in operation unless the plant/equipment has a noise that has a distinguishable, discrete continuous note and/or if there are distinct impulses, in which case the noise level from
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that piece of equipment shall be at least 10 dB(A) below the LA90, expressed in dB(A).

- 4) The deep-frying equipment used in the kitchen serviced by the permitted extraction system shall not exceed one deep-fryer with an oil capacity of no more than 6 litres.
- 5) The equipment to control the emission of fumes and smell from the premises shall be installed with acoustic isolation and sound attenuation in accordance with the approved plans and details submitted in the Planning Statement dated 5 February 2013 and shall include removable washable bafflers, replaceable grease block filters and a fan and silencer with specifications as therein described. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the submitted details, and in particular the maintenance schedule set out in the Appendix to the Planning Statement, and retained for so long as the café/restaurant use continues.

Main Issue

3. There is one main issue which is the effect of the proposed extraction equipment on the living conditions of neighbouring residents with respect to noise and odour.

Reasons

Background

4. England's Lane is a busy side street off the main road through Belsize Park (A502). The north-west side of the street on which the appeal site lies is within the Belsize Park Conservation Area (CA). The appeal premises, a café/bistro trading as Ginger and White, occupies a corner site at one end of a parade of small shop units. There are a variety of uses in the parade including retail, other cafés, including in the two closest units, hair salon, wine merchant, estate agent etc. Ginger and White and the surrounding area appeared busy and vibrant at the time of my visit, a weekday morning.
5. The existing café/restaurant (A3) use was permitted in 2010. The permission required by condition that a high level fume extraction system be provided. The conditions did not require compliance prior to commencement of the use and it is understood that a restaurant opened at the site. A low level extraction system was installed which does not meet the terms of the conditions and which was unauthorised. This system is clearly audible in the immediate vicinity and cooking smells are apparent. It is now the subject of an extant enforcement notice. The original business failed. In March 2012 the current occupiers began trading as Ginger and White.
6. The low level extraction system which is the subject of this appeal was proposed because the original high level scheme appears to have been based on a flawed analysis and could not be installed as required. Furthermore, Ginger and White have been refused the consent of the landowners to install a high level extraction system on the building and there is concern that if a high level system was to be installed it would discharge close to windows in the loft apartment. The proposed system would incorporate a primary grease and smoke filtration system, a quieter fan and a silencer. The latter would be

housed in a small brick enclosure which would provide further sound insulation. The Council has not objected to the character or appearance of the enclosure and I agree that it would be compatible with its location within the Belsize Park CA.

Living conditions

7. Ginger and White occupy the ground floor of the building, which is five storeys high including the accommodation in the roof space. The kitchen is to the rear in a semi-basement. The proposed extraction system would vent through the rear elevation into a relatively enclosed area. An existing low level extraction system which serves a nearby café/restaurant discharges into the same rear courtyard, some distance from the proposed system. I have no evidence that this has been the subject of complaints or that it would materially affect the proposed system.
8. Immediately above the appeal site kitchen are commercial premises, understood to be part of the adjacent café. Above this the use is understood to be residential. The windows above the proposed extraction system are understood to serve bathrooms. There are other windows which appear to serve habitable rooms in nearby elevations. Opposite the appeal site kitchen is the blank side wall of Nos 1-7 Antrim Mansions. The closest windows in this building are in a set back section of wall towards the rear of the building.
9. The noise survey submitted with the application concludes that the noise levels produced by the proposed extraction system when measured 1m in front of the closest windows serving habitable rooms would be satisfactory, being over 10 dB(A) below background levels as measured during permitted opening hours, and are unlikely to lead to complaints. They would meet the relevant standard set out in Policy DP28 of the London Borough of Camden Local Development Framework (LDF), 2010, which seeks to ensure that noise and vibration are adequately controlled.
10. The Council's Environmental Health Officers (EHOs) were satisfied that in the case of the kitchen at the appeal site, which is small and uses a single six litre capacity deep-fryer, both noise and odour would be suitably mitigated by the proposed low level extraction system, subject to planning conditions relating to the installation and maintenance of the equipment, a limitation on the size of deep-fryer used at the premises and a noise condition.
11. Planning officers took a contrary view, stating that no conclusive evidence existed which confirmed that low level systems were effective and citing *Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems*, published by DEFRA in 2005, which concludes that high level discharge represents best practice. They also raised concerns that the proposed conditions, owing to their specific nature, would not meet the tests for conditions set out in *Circular 11/95: The use of conditions in planning permissions* and in particular would not be enforceable.
12. The DEFRA guidance acknowledges that there will be cases where for planning or legal reasons a high level discharge system is not feasible. In such cases the advice is that a higher degree of odour control will be required to compensate for the poor dispersion. There is no evidence to suggest that the EHOs were unaware of this guidance and it appears to have been taken into account in

forming their view that the proposed system would be satisfactory. The appellant points out that the guidance is several years old and suggests that it does not take account of recent improvements in low level extraction systems. Overall, in the absence of any credible evidence that would contradict the advice of the EHOs, I am not therefore persuaded that the proposed system would be ineffective.

13. With respect to the proposed conditions, whilst the wording suggested by the EHOs may not meet the tests set out in Circular 11/95 there is no reason why this could not be re-drafted, incorporating the same requirements, so as to make the conditions precise, reasonable and enforceable. Although a regular maintenance regime, as proposed by the appellant, would need to be conditioned this would not be unreasonable or unduly onerous. Any material breach would be readily apparent since it would lead to loss of amenity due to cooking smells. The circular states that where a condition is intended to prevent harm to the amenities of an area, it will not usually be difficult to monitor, as those affected by contravention of its requirements are likely to be able to provide evidence of any breaches. I see no reason why this would not be so in this case. I therefore consider that the suggested matters could be effectively conditioned and if necessary enforced.
14. A small number of neighbouring occupiers have objected to the proposed extraction system. However, their complaint appears to be with the noise and smells caused by the existing system. Since the purpose of the new system is to control both noise and cooking odour such that they do not give cause for complaint I consider that the objections are not well founded. Reference is made to another case where a low level extraction system elsewhere in the Borough was dismissed on appeal. However, I have limited details of that case and it is not clear whether it is readily comparable. In any event each appeal must be judged on its own merits. Other close neighbours, including the landowner, have expressed support for the proposed scheme on the grounds that it will lead to an improved situation.
15. It is concluded on the main issue that the proposed low level extraction system would have no materially detrimental effect on the living conditions of neighbouring residents with respect to noise and odour. The scheme would therefore comply with the requirements of Policy CS5 of the Camden Core Strategy, 2010, Policy DP26 of the LDF and the National Planning Policy Framework which, taken together, seek to ensure that, amongst other things, new development protects the living conditions of residents through adequate control of noise and odour such that a good standard of amenity is secured for all existing and future occupants of land and buildings.

Conditions

16. The Council suggests conditions to ensure that the development is carried out in accordance with the approved plans and I agree this is necessary for the avoidance of doubt and in the interests of proper planning. A condition limiting the capacity of deep-frying equipment used in the kitchen at the appeal site is also suggested and I agree that this is necessary because the extraction system has been designed to cope with the limited frying associated with the existing café. In addition to these conditions I consider that the matters raised by the EHOs need to be incorporated into conditions. These require the extraction

equipment to be installed and thereafter maintained in accordance with the submitted plans and Planning Statement so that adequate odour control is achieved, and for noise levels to be in accordance with the submitted noise report so that they meet the standards set out in LDF Policy DP28 and protect the living conditions of neighbouring occupiers.

Other matters

17. The outcome of this appeal does not alter the status of the extant enforcement notice or discharge the conditions on the original 2010 planning permission for the café/restaurant (A3) use. It will be for the Council and the appellant to agree on a way forward with respect to these matters, in the light of this decision.

Conclusion

18. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

KE Down
INSPECTOR