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## Appeal Decision

Site visit made on 22 September 2015

**by C J Ford BA (Hons) BTP Dist. MRTPI**

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2015

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**Appeal Ref: APP/X5210/C/15/3007634**

**Land at 3 Plender Street, London NW1 0JT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Bilal Shaista (Allen Goldstein Ltd) against an enforcement notice issued by the Council of the London Borough of Camden.
  - The Council's reference is EN14/1096.
  - The notice was issued on 3 February 2015.
  - The breach of planning control as alleged in the notice is: Without planning permission erection of extract flue to side elevation of building.
  - The requirements of the notice are to completely remove the extract flue and make good any damage to the building.
  - The period for compliance with the requirements is one month.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) & (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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### Decision

1. I direct that the enforcement notice be varied by the deletion of the words '*one month*' from section 5 and their substitution by the words '*three months*'.
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### The appeal on ground (a) and the deemed planning application

#### *Main issues*

3. The main issues in this case are:
  - i) The effect of the development on the character and appearance of the host building and the area.
  - ii) The effect of the development on the living conditions of nearby occupiers.

#### *Reasons*

##### *i) Character and appearance*

4. The appeal site is located within the Camden Town Conservation Area (CA). The National Planning Policy Framework (the Framework) sets out that

Conservation Areas are designated heritage assets and that great weight should be given to the asset's conservation. Additionally, in the exercise of planning functions, the statutory test in relation to Conservation Areas is that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

5. Part 1 of the Camden Town Conservation Area Appraisal and Management Strategy 2007 identifies the special qualities of the CA. It divides the CA into two character sub areas with the appeal site being located in sub area 1: Commercial. It notes that Pratt Street and Plender Street generally consist of three storey flat fronted buildings, the majority of which contain shops at ground floor level with much altered shopfronts. The appeal building, No 3 Plender Street, generally reflects this character. Appendix 2 of the document also identifies those buildings that make a positive contribution to the CA and this includes 1-8 Plender Street.
6. The building occupies a prominent end of terrace position alongside the junction of King's Terrace (north) with Plender Street. Given the front section of the building is also visible from Camden High Street to the south west, it is a visually sensitive location.
7. The appeal premises occupy the ground floor and basement of the building and comprise a fast food restaurant. Residential accommodation is located above at first and second floor levels. The development which is the subject of the appeal is a fairly large diameter flue which is painted in a maroon colour and erected on the flank elevation, facing King's Terrace. The flue emerges part way up the ground floor of the building.
8. When the Council undertook its investigation in late 2014, the flue reached a height that was in broad alignment with the top of the first floor windows. Prior to serving the enforcement notice<sup>1</sup>, the flue was extended so that it projects above the roof level.
9. Due to its size, colour and positioning, the flue appears as an unsightly and incongruous addition which unduly dominates the flank elevation. It is therefore harmful to the character and appearance of the host building. The poor relationship of the development to the host building is visually intrusive within the surroundings.
10. The appellant suggests the visual impact of the development could be mitigated by the installation of an extraction flue cover, secured by imposing a related planning condition. Details have been provided of a firm that manufacture covers which they say 'can be made in any finish, to replicate the finish on the existing building, including brick effect'.
11. The details contain several case studies and include one related to a Listed Building within a Conservation Area. Nevertheless, the relationship of the developments to the public realm is not clear from the supporting photographs and several of the commentaries specifically refer to the flues being installed at the back or rear of a restaurant. It is also apparent that some of the developments commence and project upwards from the top of an adjoining roof.

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<sup>1</sup> As the Enforcement Delegated Report refers to the flue extending 'above roof level' on the King's Terrace elevation, this indicates the Council's appeal statement is incorrect in commenting that the height of the flue has been amended to terminate above the roof ridge since the notice was served.

12. The context of the appeal development is fundamentally different. Firstly, it is sited in a visually sensitive location, on an elevation which directly adjoins the public realm. Its close proximity to passers by is such that the detailing differences between the brick of the building and the brick effect of the cover would be readily apparent. It would therefore fail in its intention of providing successful camouflage and instead appear as a substantial anomaly to the design of the building. Secondly, it would awkwardly commence from a position part way up the side of the building. I therefore consider the harmful effects of the flue could not be adequately mitigated by the installation of a brick effect cover. Indeed, the additional bulk of such a cover would exacerbate the existing visual impact
  13. In light of the above, I conclude the development has an unacceptably harmful effect on the character and appearance of the host building and the area. It fails to preserve or enhance the character or appearance of the CA. The development conflicts with Policy CS14 of the Camden Core Strategy 2010-2025 and Policies DP24 and DP25 of the Camden Development Policies 2010-2025. Amongst other things, these policies require developments to respect local context and character and seek to preserve Camden's heritage assets. It also conflicts with Camden Planning Guidance Design 2013 (CPG 1), which specifies that installations in Conservation Areas must be in keeping with the design of the building.
- ii) Living conditions*
14. In the absence of sufficient information the Council expressed concern that the flue did not comply with its noise standards and was thereby contrary to related development plan policies. However, the appellant has subsequently submitted a noise impact assessment which demonstrates that the noise emissions meet the relevant requirements due to the flue being fitted with an inline silencer.
  15. The Council has raised a further concern in its appeal statement regarding cooking smells and fumes. Specifically, flue extractors are normally expected to terminate at least 1m above the roof ridge of the nearest residential property. It is emphasised that No 2 Plender Street is one storey higher than the appeal building and has residential accommodation within the upper floors.
  16. No 2 is located on the opposite corner of King's Terrace and does not have second or third floor windows on the flank elevation. Given the degree of separation and the set back of the flue from the windows found on the front elevation to No 2, I consider the occupiers of this building would not experience harmful smells or fumes. Similarly, whilst a representation from an occupier within King's Terrace refers to strong unpleasant smells within the road, I consider the increased height of the flue ensures the occupiers of King's Terrace would not experience harmful smells or fumes.
  17. As a result, I conclude the development does not have an unacceptably harmful effect on the living conditions of nearby occupiers. It thereby does not conflict with Policy CS5 of the Camden Core Strategy 2010-2025 or Policies DP26 and DP28 of the Camden Development Policies 2010-2025. Amongst other things, these policies seek to protect the living conditions of occupiers and neighbours in relation to harmful noise, odour and fumes.

### *Other matters*

18. The appellant has drawn attention to the Framework, London Plan Policy 2.15 and several of the Council's development plan policies in terms of the support for economic growth and the promotion of successful and vibrant centres. Reference is also made to the need for the flue for the operation of the business.
19. It is not disputed that the appeal premises is an appropriate town centre use and is generally in accordance with the aforementioned policies. Furthermore, the Council indicate that in the past the appeal premises have been able to operate as a restaurant without the need for an external flue. The appellant has failed to demonstrate that other possible solutions which do not have the harmful effects of the appeal development have been explored. Accordingly, little weight may be given in the determination of the appeal that an external flue is needed for the operation of the business.

### *Conclusion*

20. Notwithstanding my finding on living conditions, the harm in respect of the character and appearance of the host building and the area is an overriding consideration. The appeal on ground (a) and the deemed planning application therefore fail.

### **The appeal on ground (g)**

21. The appellant suggests the period for compliance should be extended from the one month specified in the notice to six months so as to allow sufficient time to find an appropriate resolution with the Council. Otherwise, compliance with the notice would effectively mean the premises would have to close, thereby affecting the livelihood of the owner of the business.
22. A period of one month is unlikely to provide sufficient time to find an appropriate resolution and compliance with the notice could result in a harmful break in the continuity of the livelihood of the owner. However, a period of six months would be excessive to achieve this and it would fail to reflect that in the public interest the steps required by the notice should be carried out without undue delay. I therefore consider the period for compliance should be extended but to three months rather than the six months sought. Three months would be a reasonable period for compliance. Varying the notice as such would cause no injustice to the Council. To this limited extent, the appeal on ground (g) succeeds.

### **Conclusion**

23. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*C J Ford*

APPOINTED PERSON