

Report to: PLANNING COMMITTEE

Date of Meeting: 20 July 2017

Report from: Assistant Director of Housing and Built Environment

Application Address: 96 Norman Road, St Leonards-on-sea, TN38 0EJ

Proposal: Installation of replacement kitchen extract duct (Retrospective)

Application No: HS/FA/17/00100

Recommendation: Grant Full Planning Permission

Ward: CENTRAL ST LEONARDS
File No: NO35960
Applicant: Ms Yoong Tung per R D P Chartered Architects
14 Cross Street St Leonards on Sea East
Sussex TN37 6DP

Interest: Owner
Existing Use: Takeaway

Policies
Conservation Area: Yes - St. Leonards East
Listed Building: No

Public Consultation
Adj. Properties: Yes
Advertisement: Yes - Conservation Area
Letters of Objection: 91
Petitions Received: 1

Application Status: Not delegated - 1 Petition

Site and Surrounding Area

No. 96 Norman Road is a two-storey terraced building within St Leonards East Conservation Area. This area of St Leonards-on-sea is an urban area that comprises residential and commercial uses and is identified within the Development Management Plan (2015) as a Cultural Quarter. Buildings in the immediate locality are typically two-storey Victorian terraced. The building is not listed. This application relates to the takeaway business which occupies the ground floor and the basement of the building.

The takeaway business operates within the following advertised opening hours:

Monday - Saturday: 11:00 - 23:00

Sunday: 11:00 - 23.00

In addition, the premises holds a licensing authorization to carrying out the sale of late night refreshment (includes hot food) within the following hours:

Sunday - Thursday: 23:00 - 23:30

Friday - Saturday: 23:00 - 00:00

Seasonal variation - 1st June - 31st August 23: 00 - 01:00

It is noted that the premises can operate before the identified hours (23:00 hours) with no licensing authorization (Lic Act 2003).

Constraints

St Leonards East Conservation Area

SSSI Impact Risk Zone

Proposed development and Background information

This is a retrospective planning application for the installation of an extractor duct at the rear of the premises following the service of an Enforcement Notice (referenced below) in respect of this unauthorised duct. The ductwork is a replacement of an old system damaged in a fire. The duct is located at the rear of the commercial property. From the courtyard at the rear of the building, it is noted that the extractor ductwork exits the building at first-floor level and continues up to the eaves and then follows the slope of the roof to the apex where it stands vertically to discharge at a high level (1.3m above the ridge height).

As set out in the paragraph below the previous extraction ductwork was granted planning permission in 2006. That permission was granted subject to a number of conditions including condition no.2 which states, "The completed installation shall provide a sound pressure level of not more than 35 dB(A)eq (5min) when measured in the centre of the rear yard 1.5m above ground level". The ductwork which was granted planning permission in 2006, operated without causing a detrimental impact in terms of noise or smell to the immediate neighbouring properties. The new replacement system, installed without planning permission, has been the subject of a number of complaints to Environmental Health in respect of noise and smell.

Relevant Planning History

- | | |
|----------------|---|
| EN/16/00090 | Service of an enforcement notice in respect of an unauthorized installation of an extractor duct.
Issued 7 December 2016 |
| EN/16/00076 | Service of a Planning contravention notice in respect of an unauthorized installation of an extractor duct.
Issued 14 October 2016 |
| HS/FA/05/00459 | Remove existing ductwork and fit new ductwork.
Granted 20 January 2006 |

It should be noted that the Council can withdraw the enforcement notice EN/16/00090 should this permission be granted. Alternatively, if the application is refused this will stay in effect and appropriate action will be taken. The current period for compliance with the enforcement notice expired on 16th April 2017. However, the Council has temporarily suspended further legal procedures to await the outcome of the planning application.

National and Local Policies

Hastings Local Plan – Planning Strategy (2014)

- Policy FA2 - Strategic Policy for Central Area
- Policy FA4 - Strategy for Central St Leonards
- Policy EN1 - Built and Historic Environment
- Policy SC1 - Overall Strategy for Managing Change in a Sustainable Way

Hastings Local Plan – Development Management Plan (2015)

- Policy LP1 - Considering planning applications
- Policy DM1 - Design Principles
- Policy DM3 - General Amenity
- Policy DM6 - Pollution and Hazards
- Policy HN1 - Development Affecting the Significance and Setting of Designated Heritage Assets (including Conservation Areas)
- Policy HN2 - Changing Doors, Windows and Roofs in Conservation Areas
- Policy CQ1 - Cultural Quarters

National Planning Policy Framework (NPPF)

The NPPF states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Para 14 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay.

Three dimensions of sustainability given in paragraph 7 are to be sought jointly: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (providing housing, creating high quality environment with accessible local services); and environmental (contributing to, protecting and enhancing natural, built and historic environment) whilst paragraph 10 advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Consultations comments

Conservation Officer - **No objection, no suggested conditions.**

"The site sits within the St. Leonards East Conservation Area. The development consists of an extract flue, which runs up the rear elevation of the building, and up across the roof, and has already been installed. The rear of the property is not visible from Norman Road, but it is visible from the seafront. The extract flue is clearly visible in distance views from the promenade. However, at a glance, the extract flue looks like a chimney stack. It is only on closer examination that you can see that it is an extract flue.

It does change the view from the promenade, but the change is only slightly detrimental and, as such, only minor harm to the significance of the conservation area results. Marine Court, a Grade II listed building, frames the view from the seafront towards the rear of Norman Road. However, considering the monolithic scale of Marine Court, and the relatively minor change to the view brought about by the presence of the extract flue, I do not consider that the development harms the setting of Marine Court. Nor does the development harm the setting of any other adjacent listed buildings.

On this basis, I do not consider that planning permission should be refused for the development. Should the size or appearance of the existing extract flue need to be changed substantially to meet the requirements of the environmental health officer, then conservation should be re-consulted on our view."

Environmental Health - Noise - **No objection subject to conditions.**

Environmental Health Services was regularly consulted on this application and concluded that conditions should be applied to this permission if granted to comprehensively cover the existing issues in terms of noise, vibration and odour of the kitchen extraction duct. Environmental Health Services comments also include of an informative that relates to the kitchen window at first floor level of the takeaway business. Therefore, this has been included in this recommendation.

Representations

91 letters of objection have been received from 5 properties raising the following concerns:

- Noise
- Vibration
- Odour
- Out of keeping with the area
- Detrimental impact upon the significance of the conservation area
- Acoustic report submitted by the applicant it is not impartial
- Conditions
- Concerns regarding the compliance to the conditions
- Ownership of the chimney stack
- Kitchen window at the rear at first floor level of the Chinese takeaway
- Miscommunication between Environmental Services and Planning Services

Determining Issues

The main issues to be considered in assessing this application are relating to the impact of the development on the character of the area, including conservation area and the impact on neighbouring residential amenity in terms of noise, vibration and odour.

Principle

The site is in a sustainable location and the application is therefore in accordance with policy LP1 Hastings Local Plan - Development Management (2015) in this respect and acceptable in principle subject to other local plan policies.

Impact on Character and appearance of the Conservation Area

The extractor ductwork is installed at no.96 Norman Road, within the St. Leonards East Conservation Area, it exits from the rear of the building at first-floor level. The ductwork continues up the rear of the building to the eaves and then follows the roof slope to the apex and then stands vertically in order to discharge at a high level. The ductwork is not immediately visible from Norman Road but is visible from the seafront. As the Conservation Officer noted: "the extractor flue looks like a chimney stack" when viewed from a distance and, although it slightly changes the view from the promenade, the impact is minor. The Conservation officer has also considered the application proposal in relation to Marine Court, a Grade II listed building, which encloses the view from the promenade towards the rear of Norman Road. It has been stated that, given the scale of the listed building and the minor change to the view from the introduction of the ductwork, there is no harm imposed on the historical significance of the setting of Marine Court. As such, the ductwork is not considered to be contrary to Policy DM3 of the Hastings Local Plan Development Management Plan (2015).

Impact on Neighbouring Residential Amenities

Policy DM3 - General Amenities of Hastings Local Plan - Development Management Plan (2015) is relevant in the assessment of this application. The Policy states that in order to achieve a good living standard for future users of a proposed development and its neighbours it should be demonstrated that amenity has been considered and appropriate solutions have been incorporated into schemes. Permission will be given for development where:

a) the use of the scale, form, height, mass, and density of any building or buildings, reduces or avoids any adverse impact on the amenity (privacy, over shadowing, loss of daylight) of neighbouring properties;

Policy DM6 - Pollution and Hazards of Hastings Local Plan - Development Management Plan (2015) is also being considered in the assessment of this application. This states that in order to protect human health and water quality, planning permission will only be granted for development providing:

c) noise and odour that is detrimental to neighbouring and/or local amenity is kept to a practical minimum.

The proposal as mentioned earlier under the heading 'Proposed Development and Background information' is the replacement of an external extraction ductwork. This system currently has a significant negative impact upon a number of residents adjoining no.96 Norman Road mainly because of the current level of noise emission. The original planning permission, from 2006, was granted subject to the condition that the extractor would not exceed 35db of noise output which was considered acceptable and hence the system operated with no issues for over ten years.

The existing duct has been a reason of concern, from the neighbouring residents, from the time of its installation in the summer of 2016 until the present time. The most affected property is No. 94 Norman Road immediately adjacent to the premises.

Environmental Health Services has been consulted on this application throughout the consideration process of the application.

Following up from concerns raised by the nearby residents an acoustic report was requested which has been submitted by the applicant. The acoustic report, produced by an accredited professional firm, was assessed by Environmental Health Services. Rebuttal comments to the acoustic report, produced by the neighbour of the premises at no. 94 Norman Road, were also assessed by Environmental Health Services who produced a list of ten final conditions and an informative to accompany this recommendation.

Environmental Health Services concluded that the inclusion of mitigation measures and maintenance directions would be sufficient to ensure an acceptable level of noise, vibration and smell during the time the system runs.

In light of the planning history for the site and consultation response from Environmental Health, it is considered that the inclusion of the suggested measures will keep noise, vibration and smell at an acceptable level and hence minimise their impact on the nearby residential amenities.

Other matters

Other matters have been identified during the consideration period of this application, these are the following:

- Takeaway kitchen window
- Ownership of the chimney stack where the duct is bolted
- Compliance with conditions

The kitchen window associated with the takeaway business is located at the rear of the application premises at first-floor level. The window, when left open as means of ventilation while the business operates, contributes to the level of noise and smell produced from the running of the business. It is to be noted that this application relates to an unauthorised extraction duct and not to the kitchen window. The question of whether the duct is acceptable or otherwise does not rest on this kitchen window and whether it's open or closed. Furthermore, this application is not for the use of the premises as a takeaway. Hence this matter is not relevant to the assessment of this application and not included within the condition for this application.

However, the issue is considered under Environmental Health powers and treated within this application as an informative.

Concerns were raised by the resident of adjacent property no. 94 Norman Road, in relation to the ownership of the chimney stack where the duct is bolted. It was claimed that the chimney was wholly owned by no. 94 and therefore the duct was bolted onto property within the ownership of no. 94.

This matter has been pursued, by requesting evidence of the claim. No further action was taken in this respect as no evidence was provided to support the allegation. Furthermore, the agent has commented that the ownership of the chimney is split following the party line of the properties. This would represent the normal situation found in such properties.

Therefore within this application, it has been considered, as the planning application states, that the duct is bolted to the part of the chimney in the ownership of no. 96.

A further concern relates to the effective compliance to the conditions accompanying the recommendation for this application. It is noted that the compliance to conditions will be

monitored under the Planning Enforcement power, so it is considered that this is a satisfactory measure to effectively address the issue, and no further action would need to be taken.

Conclusion

This retrospective planning application proposes the replacement of an external extraction duct at the rear of no. 96 Norman Road. The Conservation Officer does not consider the proposal would harm the significance of St. Leonards East Conservation Area or the settings of adjacent listed buildings. Environmental Health Services has not objected to the scheme subject to conditions regarding noise, vibration and odour. In light of the above, the proposal is recommended for approval subject to conditions.

These proposals comply with the development plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The Human Rights considerations have been taken into account fully in balancing the planning issues.

Recommendation

Grant Full Planning Permission subject to the following conditions:

1. Specifications of an acoustic silencer to be installed within the ductwork, shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this permission. The specifications shall show the silencers positioned in front of the fan, so that the silencer is located between the fan and the terminal point of the duct. The approved details shall then be implemented within 3 months of the date of this permission unless another date is agreed in writing by the Local Planning Authority. The approved details, once implemented shall thereafter be retained and maintained.
2. Specifications of the acoustic enclosure to the duct work (fitted with acoustically treated panels) shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this permission. The approved details shall then be implemented within 3 months of the date of this permission unless another date is agreed in writing by the Local Planning Authority. The approved details, once implemented shall thereafter be retained and maintained.

3. Specifications of the acoustic louvers to be installed at the terminal point of the flue shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this permission. The approved details shall then be implemented within 3 months of the date of this approval unless another date is agreed in writing by the Local Planning Authority. The approved details, once implemented shall thereafter be retained and maintained.
4. Details of how the duct shall be attached to the roof/chimney shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this approval. The approved details shall then be implemented within 3 months of the date of this permission unless another date is agreed in writing by the Local Planning Authority. The approved details, once implemented shall thereafter be retained and maintained.
5. Details of the anti-vibration mounts shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this approval. The approved anti vibration mounts shall be installed within 3 months of the date of this permission unless an alternative date is agreed to in writing by the Local Planning Authority. The approved details, once implemented shall thereafter be retained and maintained.
6. Details of the odour control measures shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this permission. The approved scheme of measures shall be implemented within 3 months of the date of this permission unless an alternative date is agreed to in writing by the Local Planning Authority. The approved measures, once implemented shall thereafter be retained and maintained.
7. Details of a maintenance plan shall be submitted to and approved in writing by the Local Planning Authority within 1 month from the date of this approval. The duct hereby approved shall thereafter be maintained in accordance with the approved maintenance plan.
8. Six months following implementation a further detailed BS4142: 2014 noise report shall be submitted to and approved in writing by the Local Planning Authority. The rating level of noise emitted from the use of this plant, machinery or equipment shall not exceed the 35dB level when measured according to British Standard BS4142: 2014, at any adjoining or nearby noise sensitive premises.
Prior to any survey work or measurements being carried out the survey methodology including times, duration, locations and fan speeds shall be submitted to and approved in writing by the Local Planning Authority.

9. Within 1 month of the installation date of the anti-vibration mounts, an investigation using a class one sound level meter and competent acoustician shall take place inside the top bedroom at 94 Norman Road, St Leonards on Sea, to determine the effectiveness of the anti-vibration mounts and any structure borne transmission.
Prior to any survey work or measurements being carried out the survey methodology including times, duration, locations and fan speeds shall be submitted to and approved in writing by the Local Planning Authority. The investigation shall take place with the maximum fan settings operational and the results made available in writing to the Local Planning Authority.
10. At close of business, the fans serving the kitchen extract system shall be switched off by 23:30 hrs (Sunday - Thursday) and 00:00 (Friday - Saturday), with the exception of 1st of June to 31st August where the fan shall be switched off by 01:00.

Reasons:

1. To safeguard the amenity of adjoining and future residents.
2. To safeguard the amenity of adjoining and future residents.
3. To safeguard the amenity of adjoining and future residents.
4. To safeguard the amenity of adjoining and future residents.
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9. To safeguard the amenity of adjoining and future residents.
10. To safeguard the amenity of adjoining and future residents.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

3. It is noted that the premises is still under notice to comply with the provisions of the abatement notice served by Environmental Health on the 10th October 2016 and as a preventative measure should keep the window closed to prevent noise from the kitchen being audible outside the property or in any neighbouring residential property.

Failure to ensure that best practical means has been employed to prevent the egress of noise is likely to be a breach of the notice served and consideration to prosecution will be given upon witnessing of a breach of the notice. It should also be noted that a formal breach of the notice would be assessed by Duty Environmental Health Officers and only after careful consideration of the following factors such as: time, frequency, type and duration of noise and not just the mere presence of some noise. Officers will then make a professional judgement as to whether the noise is interfering with the material use of another property.

Officer to Contact

Miss R De Tommaso, Telephone 01424 783267

Background Papers

Application No: HS/FA/17/00100 including all letters and documents