



# Appeal Decision

Site visit made on 7 April 2009

by **John Millard DipArch RIBA FCI Arb**

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: enquiries@pins.gsi.gov.uk

**Decision date:**  
**8 May 2009**

## **Appeal Ref: APP/Q1445/A/09/2093969** **7 Arundel Mews, Brighton, East Sussex BN2 1GG**

- 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 Mr Timothy Hume against the decision of Brighton & Hove City Council.
- The application (Ref: BH2008/02748) dated 15 August 2008 was refused by notice dated 25 November 2008.
- The development carried out is the installation of ventilation ducting from ground floor premises to above the first floor.

### **Decision**

1. I allow the appeal and grant retrospective planning permission for the installation of ventilation ducting from ground floor premises to above the first floor at 7 Arundel Mews, Brighton BN2 1GG, in accordance with the terms of the application Ref: BH2008/02748 dated 15 August 2008 and the plans submitted therewith.

### **Main Issues**

2. The main issues in this appeal are the effect of the installation on, firstly, the character and appearance of the area and, secondly, the living condition of neighbouring occupiers, with particular reference to noise and odours.

### **Reasons**

3. Arundel Mews is a small enclave of 2-storey commercial premises within a densely developed area of mixed character, including a number of residential properties nearby. The appeal property is a tiny ground floor unit at the end of the mews, tucked largely out of sight behind its immediate neighbour, a car repair workshop that has a much deeper floor plan. It is used for the small scale roasting of coffee beans and, in this connection, has a flue that has been erected on the external face of the building without the benefit of planning permission.
4. The flue is a simple stainless steel tube of about 300mm diameter that leaves the building at high level on the ground floor and rises vertically to about 1m above the eaves with just a single offset around the overhanging eaves. It is the kind of installation routinely seen throughout the country on commercial premises where fume or odour extraction is needed. In my opinion, and, although it can be seen from some residential properties beyond the mews itself, especially those in Lewes Mews, the flue does not look out of place within its commercial setting.

5. Policy QD14 of the adopted Brighton & Hove Local Plan 2005 (LP) seeks to ensure that extensions and alterations to existing buildings are well designed within their context. The installation in this case, whilst unashamedly utilitarian in appearance, is neat in its design, fabrication and installation, and appropriate to its function. Accordingly, I conclude on the first main issue that the flue represents good design, in its widest sense, causes no harm to the character and appearance of the area and accords with QD14 Policy objectives.
6. The flue is the final component in a comprehensive extraction system that is designed to operate quietly and to prevent the discharge of odours and fumes into the atmosphere. From what I saw at the site visit and the limited technical information before me it appears to be a modern 'state-of-the-art' system which, properly installed, operated and maintained, should create little or no noise disturbance. Furthermore, because it incorporates the latest odour control technology, its discharge should be nothing more than hot air.
7. The system appears to have been in operation since about February 2008, but the Council's Environmental Health Officer reports that there is no record of the system causing statutory noise or odour nuisance, although some local residents do appear to be experiencing unpleasant smells. Whilst the appellant acknowledges that there may have been teething troubles in the early days, I have no reason to doubt that system is currently working as it should. In any event, the effective operation of the system is a matter for control under environmental health legislation and is not a function of the planning system.
8. Notwithstanding the Council's and local residents' concerns, I am satisfied that the extraction system installed is capable of effectively removing most of the fumes and odours arising from the coffee roasting process carried out at the premises. I am also satisfied that it can do so without creating undue air-borne or structure-borne noise.
9. LP Policies QD27, SU9 and SU10 seek to protect the amenities of neighbouring occupiers, and to control pollution and noise nuisance, and it is my opinion that the installed system accords with these Policies. I therefore conclude, on the second main issue, that the subject flue causes no material harm to the living conditions of neighbouring occupiers, with particular reference to noise and odours, and is acceptable.
10. I have noted references by some local residents to 'black soot' or 'bonfire-like ash' discharging from the flue. While coffee roasting was not in progress during my site visit, I saw no evidence of a discharge of solid particles of any description in the vicinity of the flue. In any event, it is my experience that the coffee roasting process does not normally result in the discharge of any solid matter and I consider it more likely that any soot or ash-like substance experienced by neighbours emanated from a source other than the appeal property.
11. I have considered all other matters raised but found nothing that changes the balance of my decision that the appeal should be allowed and planning permission granted.
12. The Council has suggested that, if I allow the appeal and grant planning permission to retain the flue, conditions should be imposed requiring the

fitting of odour and noise control equipment to the installation in accordance with details that have first been approved by the Council. In view of my conclusion that the system is acceptable as installed, and in the absence of evidence that the present installation causes or is likely to cause material harm by reason of odours and noise, I consider that the suggested conditions would fail the first of the six test of validity set out in paragraph 14 of DoE Circular 11/95 – *The Use of Conditions in Planning Permissions*.

13. I therefore conclude that the suggested conditions are unacceptable and that, as the system is fully installed and operational, and is acceptable in its current form, no conditions are necessary.

*John G Millard*

INSPECTOR

