



GOVERNMENT OF BERMUDA
Ministry of Home Affairs

Department of Planning

MEMORANDUM

TO: Permanent Secretary, Ministry of Home Affairs
FROM: Director of Planning
DATE: 3 January 2023

APPLICATION REF: P0436-22
APPEAL REF: APPL0033-22

APPELLANT: Food Hub c/o Marico Thomas
APPELLANT'S AGENT: CTX Design Group
APPLICANT: Food Hub c/o Marico Thomas

SITE: 3 Kings Square, Town of St. George

PROPOSAL: Retroactive Application for a White Painted Exhaust Fan

Director's Case

I write in response to your memorandum dated 29 December 2022 enclosing the appellant's submission appealing the decision of the Development Applications Board to refuse planning permission for the development described above on 14 December 2022.

I can confirm that my Department has reviewed the contents of the appeal package and is satisfied that the Board Report addresses the procedural and technical issues that are relevant to the decision. The following additional comments are offered in response to the submission by the appellant, in particular the sections addressing the two reasons for refusal.

Reason 1. The applicant has failed to demonstrate to the satisfaction of the Board that they were not responsible for the breach of planning control or that, at the time the development was being so carried out, did not know, and could not reasonably be expected to have known, that the development was in breach of planning control as required under Section 20 (2A) of the Development and Planning Act 1974.

In this section, the appellant effectively makes the argument that, as planning applications are typically not required to include minor utility details such as "the location of a sink, or grille, or the diameter of a drainage line", the appellant naturally assumed that neither planners, nor the Board, would need to assess the subject exhaust fan. Given the sheer size of this exhaust fan, which has a maximum width of 3'-1" and, together with the chimney stack (which is of similar width), protrudes a maximum of 6'-2" beyond the plane of the roof from which it is attached and projects

3'-11" beyond the ridge of the roof of the affected single-storey part of the building and its location on the most prominent part of a listed building which fronts the most prominent area (King's Square) of a Historic Protection Area and UNESCO World Heritage Site, the logic of this argument is incomprehensible. The photographs below illustrate the significant size and prominence of the subject installation and how it cannot possibly be reasonably compared to minor utility details such as "the location of a sink, or grille, or the diameter of a drainage line".



This argument fails further when considering that the appellant's agent, who has written the appellant's case and has been involved through the development of this project, has submitted hundreds, if not thousands, of planning and building permit applications, including many affecting listed buildings and Historic Protection Areas. To this end, the appellant's agent's claim that "the Planning Technical Officers, Applicant and cTx design team missed the visual impact that a new extraction hood proposed atop the roof of the original building would have on the overall project" is false and highly misleading. The applicant's agent is fully aware that floor plans and elevations are required for external alterations and additions to buildings and any application for a revision to a planning permission must clearly set out in the description of proposed development all development for which approval is being sought. In this case, the revision application made no reference whatsoever to a proposed extraction hood, the floor plans provided insufficient details and the elevations included no visual details whatsoever of an extraction hood.

For the above reasons, the subject extraction hood was never considered by any officer of the Department until the retroactive application was submitted upon the insistence of the Department. It is conspicuous that, when the appellant details the steps which were taken which culminated in the unlawful installation of the subject extraction hood, at no point was the Department contacted in respect of whether planning permission would be required; this only became apparently by site visits by technical officers after the extraction hood had been installed.

The appellant goes on to cite a number of other extraction systems within the area, however it is likely that many of these were installed without the requisite consents, many several years ago, and they certainly do not excuse the subject installation from requiring planning permission. It is apparent that there are many premises in St. George, and throughout Bermuda, which have commercial kitchens operating successfully without a system of such scale as used by the appellant in this case.

Reason 2. The subject extractor hood, by reason of its width, height, materials, appearance and location, poses significant harm to the character, appearance and fabric of the host listed building and is damaging to the character and appearance of the Historic Protection Area and World Heritage Site, in direct conflict with policies HSC.4, HSC.5(1), HSC.6, HSC.7 and HSC.11(2) of the Bermuda Plan 2018.

It is apparent, based on the appellant's submission and resultant development which exists today, that the kitchen design and consequent location of the extraction fan was based solely on operational efficiency for the benefit of the appellant with little to no consideration given to visual and historic impacts in the design process. Whilst the appellant states that other options were considered, to date absolutely no alternatives have been presented to the Department despite more than six months of discussions over this matter.

In this section the appellant's argument is based almost exclusively on his position that the building in its current form with an unsightly extraction fan is preferred to a derelict building in respect of the appearance and historic character of the Town. This matter was given careful consideration by the Board, as set out in the Board Report prepared by the technical officer.

This 'all or nothing' approach put forward by the appellant is not considered an appropriate means of assessing this proposal. A significant omission of the subject application, as well as this appeal, is the appellant's continued failure to present any other solution than that which he chose to implement without the requisite planning permission and with no consultation with the Department whatsoever. The Department accepts that some form of extraction is required for the proposed use, however the appellant is entirely refusing to compromise on the development which has already been erected. It appears possible that a smaller extraction fan located to the rear of the

single-storey part of the building could be installed, particularly given the immense variety of modern extraction systems currently available, however the appellant has not presented a single alternative to date.

The Department accepts that bringing the previously vacant building back into use has positive effects, as set out in the Board Report. However, these benefits clearly and demonstrably do not outweigh the significant visual harm which has been imposed on the listed building, Historic Protection Area and UNESCO World Heritage Site.

Careful consideration must also be given to setting a precedent should this appeal be allowed given that any other owners of unkempt buildings which are listed and/or in a Historic Protection Area/UNESCO World Heritage Site could put forward the exact same argument. Essentially, the circumstances of the host building being in a poor state are not exceptional and introducing such a precedent would lead to significant deterioration to Bermuda's historic environment.

Other Issues

The appellant was informed on 14 December 2022 of concerns raised by the ex-officio Board member representing the Bermuda Fire and Rescue Service that the subject development may not satisfy fire safety requirements given the proximity of the extraction fan to the upper floors of the host and adjacent building. There is no evidence in the appellant's submission that this concern has been addressed; it is strongly recommended that this matter be resolved prior to the resolution of this appeal should the Minister be minded to grant planning permission.

Conclusion

For the reasons set out above and in the Board Report, the Minister is respectfully requested to uphold the decision of the Development Applications Board to refuse planning permission.

Given that the development has already been carried out and it is not possible to mitigate its visual impact of the subject extraction hood without relocating and reducing its size, which would necessitate the submission of a separate DAP1 planning application for development, no conditions can be suggested at this time should the Minister be minded to overturn the decision of the Board and grant planning permission, other than the standard retroactive building permit condition:

1. For the avoidance of doubt the consent hereby granted is for retroactive planning permission only. An amendment to the building permit BC0051-21 must be made and approved in order to allow works on site to continue.



Paul McDonald
for the Director of Planning