

I. INTRODUCTION

- I.1 On behalf of our clients Antonia Lester and Philip Bloom ("the Appellants") we write to submit an appeal against the enforcement notice served on 2 March 2023, which will take effect on 14 April 2023 ("the EN"). The EN was issued by the London Borough of Camden ("The Council") in relation to alleged breaches of planning control at 10 Antrim Grove, London, NW3 4XR ("the Property").
- I.2 The Appellants are married and Antonia Lester is the legal owner of the Property. Mr Bloom is an occupier of the Property and they jointly bring this appeal. They reside at the Property with their family. For the avoidance of doubt, the Property has been renovated back into a single residential unit in 2007.

The Council's Case

- I.3 The Council served an EN on the owner occupiers of the Property, alleging that the installation of three air conditioning units on the side of the Property ("the Development") was carried out without planning permission. The reasons given were that:
- (a) the development has occurred within the last 4 years;
 - (b) the air conditioning units by reason of their size and position are harmful to the character of the building, the integrity of the terrace of which it forms part and character and appearance of the conservation area contrary to policy DI of the Council's Local Plan, adopted in 2017;
 - (c) given the close proximity to the habitable rooms, the units give rise to potential unacceptable levels of noise detrimental to the neighbouring resident's amenity contrary to policies A1 and A4;
 - (d) the unauthorised development, by reason of its additional energy consumption and in the absence of evidence that demonstrates the efficiency and controls of the system, as well as the ability to take advantage of free cooling and or renewable cooling sources, is contrary to policy CC2 of Camden's Local Plan; and
 - (e) the air conditioning units have been installed at 10 Antrim Grove within the last four years and it is therefore expedient to pursue enforcement action.

The Appellant's Case

- I.4 The Appellant cites the following grounds of appeal:
- (a) that, in respect of any breach of Planning Control, which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
 - (b) that those matters have not occurred;
 - (c) that those matters (if they occurred) do not constitute a breach of planning control;
 - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters; and

- (e) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy the injury to amenity, which has been caused by any such breach.

2. PLANNING HISTORY

- 2.1 The Property was purchased and renovated in 2007 and the original air conditioning units ("The Original Units") were installed circa 2009. There was a severe fire at the Property in March 2016. The Appellants lost all of their personal possessions and the Property was badly damaged. A complete refurbishment of the Property, including the installation of the Replacement Units, was required. The 3 x new air conditioning units ("the Replacement Units") in question, are located on the side of the semi-detached Property within the Belsize Conservation Area and is not a statutory or locally listed building.
- 2.2 The Council served an enforcement notice - EN19/0638 on 22 September 2020 on the Appellants. It outlined that planning permission has not been obtained for the Replacement Units. The enforcement notice was defective and later withdrew it on the 7 July 2021.
- 2.3 The Appellants made a retrospective planning application for the Replacement Units - Planning Ref: 2021/5353/P and associated acoustic screening with accompanying noise compliance report. This application was refused on the 22 December 2022 on the grounds that the proposal failed to justify the need for cooling in the absence of dynamic thermal modelling and that it failed to demonstrate the appropriate climate adaption measures to reduce the impact of dwelling overheating...and it was contrary to Camden's CCI and CC2 policy of the Local Plan 2017. The Council did not accept this style of report.
- 2.4 A planning justification report submitted with the retrospective planning application recommended an acoustic enclosure with timber cladding to minimise the impacts of the Replacement Units, or recommending that they could be slightly lowered. It is noted that other planning applications for air conditioning units in the Conservation Area had been granted with similar mitigation proposals. These include 21 Belsize Road, Ref 2020/2383/P, 90 Camden Mews 2020/2222/P; 6 Rosencroft Avenue NW37QB Ref 2019/6384/P, and 17 Boscastle Road NW5 IEE, Ref: 2019/2713/P.
- 2.5 The Appellants submitted an application for a Certificate of Lawful Existing Use Development Application ("CLEUD") pursuant to section 191 of the Town and Country Planning Act 1990 (as amended) in relation to 3 x Replacement Units at the Property.
- 2.6 The evidence included:
 - 2.6.1 Statutory Declarations x 3;
 - 2.6.2 Photos of the Property after the fire on 13 March 2016, showing the Original Units in situ; and
 - 2.6.3 News articles dated March 2016 confirming the date, time and location of the fire.
- 2.7 The Council refused to grant the CLEUD on the 5 October 2022 citing insufficient evidence.
- 2.8 On 2 March 2023, the Council served new Enforcement Notices against the Property in relation to the Replacement Units to take effect on 14 April 2023.

3. APPEAL GROUNDS

The Appellant responds to the grounds for appeal provided in paragraph 1.4 above: Grounds (a), (b), (c), (d) and (f).

Appeal Grounds A, B, C & D - Reason (A) & (E) EN

3.1 The Appellant agrees that they installed the Original Units in 2009 and the 3 x Replacement Units in 2018:

3.1.1. the Replacement Units have not been installed within the last 4 years as the EN asserts and that those matters have not occurred;

3.1.2. that the Original Units and Replacement Units are now permitted and do not constitute a breach of planning control;

3.1.3 they are immune from enforcement action due to the passage of time (4 years) and that there has been no breach of planning control for the following reasons;

3.1.4 that the Original Units were in place for over a period of circa 7 years and the Appellants enjoyed uninterrupted use;

3.1.5 that the Replacement Units have been in place for a period of more than 4 years and the use is uninterrupted; and

3.1.6. that any mitigation required relating to the appearance and operation of the Additional Units is capable of being secured by planning condition and as such planning permission should be issued.

3.2 A use is considered to be lawful, if no enforcement action is taken within 4 years, and both the Original Units and the Replacement Units are immune from enforcement action in accordance with section 171(B)(1) of the Town and Country Planning Act 1990 ("TCPA 1990") and, as such, an appeal against the Enforcement Notice is being made in accordance with section 174 of the TCPA 1990.

3.3 It is noted that the LPA served an initial enforcement notice EN19/0638 on 22 September 2020 and it was withdrawn and removed from the charges register on the 7 July 2021. The Appellant will argue that the first notice was so defective as to be void ab initio.

History - Original Units

3.4 The principle of development for the Original Units has already been established at the Property.

3.5 The period of installation for the Original Units was over 7 years prior to the fire and, as such, is immune from enforcement action by the Local Planning Authority ("The LPA") in accordance with section 171B (1) of the TCPA 1990, which provides that:

'where there has been a breach of planning control consisting of building operations... in or on land, that no enforcement action may be taken after the end of a period of four years beginning with the date on which the operations were substantially completed.'

- 3.6 This has been evidenced by statutory declarations, previously provided by the Appellants to the Council in relation to the application for a Certificate of Lawfulness (Existing) reference 2022/2473/P. These documents will be provided to the Planning Inspectorate and form part of the evidential. The statutory declarations were provided by Antonia Lester (freehold owner), Darryl Lazarus (gardener at the Property) (Original and Replacement Units) and Damian Pitman (owner of 3 Antrim Grove) (Original Units circa 2014) and together they attest as to their installation and operation.

Reason (B) EN

- 3.7 The Original Units used for air conditioning were predominately situated in the same location as the Replacement Units on the (facing) left hand side of the building. The New Units are the same colour and similar size to the originals. It is argued that the New Units are not development within the meaning of section 55 of the TCPA 1990. It is noted that they are slightly larger in size, and that any increase in size alone could be regarded as 'de minimis'. This is maintenance, improvement which does not materially affect the external appearance of the building.

History - Replacement Units

- 3.8 Unfortunately, the Replacement Units were necessary due to a severe house fire at the Property in March 2016, which rendered the Original Units inoperable and left the Property without air conditioning. It is noted that everything in the house became inoperable. The Replacement Units were installed in 2018. Further details of this installation will be provided.
- 3.9 The Replacement Units are immune from enforcement as a period of 4 years has elapsed since their implementation and operation and the Council have failed to take enforcement action within the appropriate time frame. It is noted that the date the Enforcement Notice takes effect on the 14 April 2023.
- 3.10 At this stage, it is unclear as to what photographic or observed evidence the Council are also relying upon to evidence the alleged breach of planning control.

Additional

- 3.11 The Replacement Units are partially obscured by a high side access wooden door and only the very top of the Replacement Units is visible. Replacement Original Units could not be procured due to the age and discontinuance of that particular make.
- 3.12 The Applicant has previously sought directions from the Council in relation to raising the height of the side fence and/or door but the Council would not agree. The Applicant would welcome a voluntary discussion with the Council in relation to any steps which could be taken in order to improve the visual appearance or homogenization of the Replacement Units.

Appeal Ground F - Reason (C) and (D) EN

- 3.14 The requirement of the Council that the Replacement Units should be removed exceeds what is required in order to remedy the alleged breach. It does not take into account the lawful development established by the Original and Replacement Units. A planning condition relating to cladding and an acoustic enclosure would have been sufficient.
- 3.15 The Replacement Units are quieter than the Original Units due to an improvement in technology and noise emissions. The Applicants have explained that they are used in daytime hours whilst the family are awake. They are seldomly used late in the evenings or overnight.

- 3.15 The Applicants commissioned a noise impact assessment dated 15 October 2020, which was submitted in support of planning application reference 2021/5353/P. The results of which provide that noise emissions from the Replacement Units would not have an adverse impact on the nearest residential property, provided that noise control strategies, as outlined in the assessment, are followed. The report takes external readings from the garden and nearest sensitive receptor (neighbour), and it is noted that the readings are acceptable.
- 3.16 A copy of the noise report 15 October 2020 will be provided as a part of this appeal.

4. CONCLUSION

- 4.1 The Replacement Units are not development and do not materially affect the Property. The Original Units and the Replacement Units were not implemented within the last 4 years. They are immune from enforcement action by the LPA in accordance with section 171(B) of the TCPA 1990. Any mitigation required due to the appearance, noise and operation of the Additional Units is capable of being mitigated by planning condition and planning permission should be granted. Consequently, this Appeal has been made under section 174 (grounds: (a); (b); (c); (d); and (f) for appeals against an enforcement notice under the TCPA 1990.
- 4.2 The Appellant reserves its right to submit further material in support of the Appeal both in accordance with Regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 and with the relevant procedure rules once the appeal procedure is determined.
- 4.3 A payment of £412.00 has been made to the Council, concurrently with submission of this appeal.