



## Appeal Decision

Site visit made on 18 April 2023

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 7<sup>th</sup> June 2023**

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**Appeal Ref: APP/X5210/C/22/3296151**

**Land at: 40 Gray's Inn Road, London WC1X 8LR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Kamran Raza against an enforcement notice issued by London Borough of Camden.
- The notice, numbered EN20/1065, was issued on 21 February 2022.
- The breach of planning control as alleged in the notice is Without planning permission: The installation of 3x air conditioning units in the rear courtyard and the installation of a new shopfront.
- The requirements of the notice are to:
  1. Completely remove the 3x air conditioning units from the rear courtyard of the property and make good any resulting damage;
  2. Completely remove the unauthorised shopfront including and reinstate a shopfront to match the materials, proportions and design of the shopfront previously in place; and
  3. Remove any resultant debris and paraphernalia from the premises as a result of the above works.
- The period for compliance with the requirements is: Three (3) months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### Formal Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of 3x air conditioning units in the rear courtyard and the installation of a new shopfront at 40 Gray's Inn Road, London WC1X 8LR as shown on the plan attached to the notice and subject to the conditions set out in the attached Schedule of Conditions.

### Preliminary Matters

2. The wording of the second of the notice's requirements appears to be incomplete, with wording missing between *'..including..'* and *'...and reinstate...'*. The Council's officer report provides no further clue as to the nature or intent of any missing words either in that report or within the notice, nor has the Council provided any clarification on this matter. Nevertheless, in light of my formal decision, it is not necessary for me to formally correct the notice.

3. The terms 'air conditioning' units, 'condensing' units and 'chiller' units are used interchangeably by both main parties throughout their respective submissions. However, for consistency I will refer to them in the terms set out in the notice.

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

#### **Main Issues**

4. The main issues are:
  - The effect of the replacement shopfront on the character and appearance of the appeal building and the surrounding area; and
  - The effect of the air conditioning units on the living conditions of occupants of neighbouring properties, with particular regard to noise and disturbance arising through their operation; and
  - Whether or not the air conditioning units would contribute to climate change.

#### **Reasons**

##### *Character and appearance*

5. The appeal property lies within one of two terraced blocks, which are locally listed, on Gray's Inn Road either side of the entrance to Baldwin's Gardens. The local listing description notes the building<sup>1</sup> as being 'robust and boldly embellished'; those embellishments including large decorative console brackets and pilasters to the shopfronts.
6. The replacement shopfront retains elements of these distinctive features, most notably the pilasters and the decorative semi-circular console brackets atop. These features are repeated along the length of the blocks on either side of the Baldwin's Gardens entrance and contribute significantly to the building's distinctive character and appearance, and to its architectural and townscape significance.
7. Whilst the replacement shopfront has resulted in the loss of the stallrisers, altered the proportion of solid-to-glazing on the shopfront and re-sited the door to the frontage itself, the prominent and distinctive console brackets and pilasters have been retained and the fascia does not disrupt the cornice above. Furthermore, although the side-facing doorway and entrance to the ground floor commercial unit has been lost, re-sited within the street frontage, the wide and heavily recessed off-set entrance doorway to the building's upper floors remains intact. A modern retractable awning provides further interest to the ground floor façade between glazing and fascia and, with movable external display shelving, brings activity to the shop's frontage.
8. I accept that the replacement shopfront has resulted in the use of a powder coated aluminium frame rather than timber and minimal metal stallrisers, but these features are little different to the neighbouring units to the north. Although poor design should not be used to justify further poor design, the appeal scheme retains the most significant features of the building noted in its local list description. Rather than causing the degree of harm the Council set out, I am satisfied that the replacement shopfront is an acceptable contemporary reworking of the shopfront, consistent with and retaining those

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<sup>1</sup> Locally listed as 38 to 54 Gray's Inn Road

features noted in the local listing to be of particular townscape and architectural significance.

9. The three air-conditioning units are installed at the rear of the property in a heavily sunken basement lightwell. The units are of a size that mean they occupy almost all of the available depth of the lightwell from the building's rear elevation to the opposing wall and, mounted three-high, a considerable height. Cabling and pipework runs externally across the rear elevation of the building before entering the building between basement and ground floor levels.
10. Although the units dominate the lower portion of the side wall of the lightwell they are only really visible from within the site at basement level, with more limited views from ground floor and from some elevated positions in neighbouring buildings. The units are not, therefore, widely visible, obtrusive or incongruous within the surrounding area. Indeed, given the depth of the lightwell and the height of the walls surrounding it, they are discretely sited and mounted for all but occupants of the basement at the appeal property. Given the commercial character of the ground floor units, I am satisfied that the units would not cause harm to the character or appearance of the appeal property, notwithstanding its status as a locally listed building as part of the group of 38 to 54 Gray's Inn Road.
11. Camden Local Plan (2017) (CLP) Policy D1 sets out the Council's approach to securing high quality design in development. Amongst other factors, developments are required to respect local context and character, preserve or enhance the historic environment and heritage assets and that details and materials are of high quality and complement local character. CLP Policy D2, with particular regard to non-designated heritage assets (NDA), outlines the Council's intent to protect such assets, stating that the effect of a scheme on the significance of the NDA will be weighed against public benefits balancing any harm or loss and the significance of the asset. This is broadly consistent with the approach to the historic environment set out in the National Planning Policy Framework (the Framework).
12. I am satisfied therefore that neither the replacement shopfront nor the three air conditioning units cause harm to the character or appearance of the host building or the surrounding area and preserve the significance of the locally listed building. There is no conflict with CLP Policies D1 or D2, or the Framework as a consequence.

#### *Living conditions*

13. As described above, three air-conditioning units are mounted on the side wall of the heavily sunken rear lightwell yard. Given the cramped dimensions of this area the units are sited close to a number of windows at the rear of the building and within an area heavily enclosed by tall walls.
14. The appellant's Noise Impact Assessment Report<sup>2</sup> (NIAR), accepts that the operation of the units, as and when required on a 24 hours-a-day / 7 days-a-week basis, would comfortably exceed ambient and background noise levels during the overnight period when these levels would be expected to be at their lowest. To combat this, the NIAR proposes mitigation in the form of acoustic enclosures around each of the units, together with vibration isolating mounts.

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<sup>2</sup> 'Noise Impact Assessment Report – Condensing Units' 40 Gray's Inn Road, Holborn WC1X 8LR - Sound Licensing Limited – 21/03/2022

15. The Council have not challenged the calculations and conclusions of the NIAR, nor have I been presented with any other compelling reason to cast doubt upon those findings. The mitigation measures could, I am satisfied, be appropriately and proportionately dealt with by way of suitably worded planning conditions on an approval of the planning application deemed to have been made under section 177(5) of the Act.
16. The use of planning conditions in the manner outlined is consistent with the provisions of CLP Policies A1 and A4. Together, these policies seek to manage the impacts of development, the latter addressing matters of noise and vibration, in the context of amongst other things, the living conditions of neighbours. The NIAR has demonstrated that with suitable mitigation secured by condition, noise could be controlled and managed, particularly at times with lowest background and ambient noise levels. Thus, thereby protecting the amenities of occupiers and neighbours to avoid the unacceptable harm to amenity that CLP Policies A1 and A4 seek.

### *Climate change*

17. CLP Policy CC2 requires development to be resilient to climate change and adopt appropriate climate change adaptation measures. These include measures to reduce the impact of urban overheating, including the application of a 'cooling hierarchy whilst the supporting text refers to the Council's aim of discouraging the use of air conditioning and excessive mechanical plant. London Plan (2021) Policy SI4 seeks to minimise adverse impacts on the urban heat island and reduce reliance on air conditioning systems but, although referred to by the Council in their delegated report, does not form any part of the reason for issuing the notice.
18. Although the term 'air conditioning' and 'condensing' units are used interchangeably by both parties, the supporting documentation refers to them as being refrigeration condensing units for use in connection with food display cabinets. These are, the appellant argues, essential for the operation of the food display cabinets within the retail unit, and thus the operation of the retail unit itself.
19. I have no reason to doubt this. The ground floor retail unit is a well-stocked unit with a number of chilled cabinets for the display of a range of chilled and fresh foods and beverages. It is stated that they would operate when necessary on a 24-hour / 7-days-a-week basis. I am satisfied that the units are reasonably necessary in the interests of the efficient operation of the retail unit and its chiller equipment. Although mitigation measures towards cooling the local environment have not been submitted, I am satisfied that such matters may be reasonably and appropriately dealt with by way of a suitably worded condition. On this basis, there would be no conflict with CLP Policy CC2.

### **Other Matters**

20. Although the Council's appeal questionnaire<sup>3</sup> states that the development affects the setting of a listed building, this did not constitute a reason for issuing the notice. Nevertheless, the Council has provided me with the official list entry for grade II\* listed 12, 13 and 14 Gray's Inn Square, gatehouse and attached railings which together lie diagonally opposite the appeal site. The

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<sup>3</sup> Q.14.j.

appeal site also lies opposite the Bloomsbury Conservation Area (the CA) and, specifically, the Lincoln's Inn Fields / Inns of Court / High Holborn CA sub-area, for which I have been provided with the Council's '*Bloomsbury Conservation Area Appraisal and Management Strategy*' (2011).

21. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) requires that '*in considering whether to grant planning permission....for development which affects a listed building or its setting, the.....Secretary of State shall have special regard to the desirability of preserving the building or its setting.....*'. With regard to conservation areas, Section 72(1) of the PLBCAA goes on to state that '*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*'. Framework paragraph 206 states that proposals that preserve elements of the CA's setting that make a positive contribution to the asset should be treated favourably, whilst the Framework's Glossary defines the setting of a heritage asset as being '*the surroundings in which it is experienced*'.
22. For the reasons set out above I have already concluded that neither the replacement shopfront nor the air conditioning units cause harm to the character or appearance of the appeal property or the surrounding area, and that the significance of the locally listed building is preserved. Located at the rear of the appeal building in a heavily sunken area, the air conditioning units are not seen in conjunction with either the listed building or the CA. As such, no harm arises to the setting of either the listed building or the CA.
23. The replacement shopfront is a minor alteration in the context of this part of Gray's Inn Road. Despite its relative proximity to the Gray's Inn Road façade of the listed building and the CA, the nature of the intervening busy road and its street trees are such that the replacement shopfront would have neutral effect upon the setting of both. The appeal scheme thereby preserves the setting of the listed building and of the CA, for which the significance of this sub-area is largely drawn from the inter-relationship between the gardens, squares, alleyways and walks amongst the Inns of Court.
24. For these reasons, the replacement shopfront scheme does not cause harm to the area surrounding the appeal property or to the setting of the listed buildings, and nor would it to the contribution that the tree lined Gray's Inn Road makes to the surroundings in which the CA is experienced. Thus, the settings of the listed building and the CA are preserved and there is no conflict with the relevant statutory requirements or the provisions of the Framework in this respect.

### **Conditions**

25. For the avoidance of doubt, I have attached a plans condition reflecting those plans submitted as appeal submissions in the interests of certainty. However, I have not included the '*Proposed Elevations - Drwg No: 05*' and '*Acoustic Insulation Details - Drwg No: 06*' plans in order to avoid duplication with subsequent conditions.
26. Conditions regarding the fitting and maintenance of appropriate acoustic mitigation, including in respect of structure-borne noise and vibration, and a scheme of urban cooling measures proportionate to the small scale of the development are reasonable and necessary in this instance in the interests of

living conditions and climate change, respectively. These conditions are imposed to ensure that the acoustic, including in respect of structure-borne noise and vibration, and urban heating, mitigation measures are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance in each instance because permission is granted retrospectively and it is not possible to use a negatively worded condition to secure the approval of these matters before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met

### **Conclusion**

27. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the installation of 3x air conditioning units in the rear courtyard and the installation of a new shopfront as described in the notice.

*G Robbie*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall be as shown on the following approved plans: 'Pre-existing & As built plan Drwg No: 01'; 'As built plan Drwg No. 02'; 'Pre-existing & As built elevations Drwg No. 03'; and 'As built elevations Drwg No. 04'.
- 2) Unless within **3 months** of the date of this decision a scheme for the mounting of the 3 air conditioning units in such a way as to minimise transmission of structure-borne sound and vibration and their enclosure with sound-insulating mitigation measures, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within **3 months** of the local planning authority's approval, the operation of the 3 air conditioning units shall cease and all equipment and plant shall be removed until such time as a scheme is approved and implemented.
  - a. If no scheme in accordance with this condition is approved within **6 months** of the date of this decision, the operation of the 3 air conditioning units shall cease and all equipment and plant shall be removed until such time as a scheme approved by the local planning authority is implemented.
  - b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.
  - c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 3) Unless within **3 months** of the date of this decision a scheme of measures to reduce the impact of urban heating including, but not restricted to, passive or active measures such as planting or green walls is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within **3 months** of the local planning authority's approval, the operation of the 3 air conditioning units shall cease and all equipment and plant shall be removed until such time as a scheme is approved and implemented.
  - a. If no scheme in accordance with this condition is approved within **6 months** of the date of this decision, the operation of the 3 air conditioning units shall cease and all equipment and plant shall be removed until such time as a scheme approved by the local planning authority is implemented.
  - b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.
  - c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

**\*\* end of schedule \*\***