

Planning Enforcement Appeal

29 Prowse Place, London NW1 9PN

Appeal against the Enforcement Notice referenced **EN22/0017** dated **15 May 2023**

THE BREACH OF PLANNING CONTROL ALLEGED

Without planning permission: Installation of 2 x air condenser units on the rear elevation at roof level.



Written Representations
Appeal by Mrs Mirjana Cvetkovic
PINS REF: APP/X5210/C/23/3323537
LPA REF: **EN22/0017**
Appeal Grounds (a), (g)
13/08/2023

Flat 1, 29 Prowse Place.

Appeal by Mrs Mirjana Cvetkovic regarding the Enforcement Notice dated 15/05/2023 requiring the removal of 2 x air conditioning units at rear roof level.

1. The single issue is sustainability.

1.1 The unauthorised air conditioning units are unacceptable for one reason. The submitted details about the development failed to justify the need for active cooling by reducing and mitigating the impact of dwelling overheating through the application of the cooling hierarchy, thereby failing to minimise carbon dioxide emissions, contrary to policies CC1 (Climate change mitigation) CC2 (Climate change adaptation measures) of the Camden Local Plan 2017.

1.2 The appellant subsequently submitted new information with the appeal by Vision Energy (undated) regarding air cooling. However, this is not considered to overcome the reason for refusal and assessment by the council's Sustainability Officer is outlined below.

2. The Council's case.

2.1 The council's case comprises the delegated report (containing the site history, site description, relevant policies and assessment) along with the following summary, consideration of new information submitted and comments on grounds of appeal.

Site

2.2 The building is a two-storey Victorian structure that has been divided into three flats. The air conditioning units serve Flat 1 at first floor level. The building is situated on the southern side of Prowse Place, to the east of Royal College Street. The building features a pitched slate roof with several rear rooflights, and it incorporates a shallow mono-pitched two-storey rear extension. The front facade of the building is set back from Prowse Place, while the rear elevation faces the corresponding rear facades of properties on Camden Street.

2.3 The site falls within the Jeffrey Street Conservation Area. Although the host building itself is not deemed a positive contributor to the area, its neighbouring properties, numbered 25 and 27, do indeed make valuable contributions to the Jeffrey Street Conservation Area.

2.4 Various planning applications for the site have been approved and refused for over the past 10 years. The history is set out in the Delegated Report

The history of the breach

2.5 The unauthorised development was first reported to the council by a member of the public In January 2022. The site was visited in August 2022 when the alleged breach was witnessed.

2.6 Throughout this period, the council extended an opportunity to the developer to rectify the breach by either removing the aforementioned units or seeking planning permission for their retention.

2.7 An application was submitted on 02/09/2022 to retain the air conditioning units but was subsequently refused permission on 03/03/2023 on the same grounds that the EN was issued. The protracted duration of the application process can be attributed to seeking provision of adequate justification for the installation of the two air condenser units.

3. Enforcement Notice Summary

3.1 On 15/05/2023 the Council issued an Enforcement Notice referenced EN22/0017, it alleges:

3.2 Without planning permission: Installation of 2 x air condenser units on the rear elevation at roof level.

3.3 The Council had sought to remedy the harm for reasons detailed below;

3.4 The development has occurred within the last 4 years; and

3.5 In absence of the justification for the need for active cooling by reducing and mitigating the impact of dwelling overheating through the application of the cooling hierarchy, the development fails to minimise carbon dioxide emissions, contrary to policies CC1 (Climate change mitigation) CC2 (Climate change adaptation measures) of the Camden Local Plan 2017.

3.6 The noticed required from 3 months of the effective date that;

- Permanently remove from the property the 2 air conditioning units on the rear elevation at roof level; and
- Make good any resulting damage.

3.7 The EN appeal is made on ground (a) and (g).

4. Main Issues

4.1 The main issues are:

- Design and Heritage,
- Amenity implications for adjoining occupiers and
- Energy and Sustainability.

4.2 The proposal is considered to be acceptable in terms of design as the air conditioning units are not highly visible. Following assessment of the acoustic report submitted with the planning application, the impact on amenity of adjoining occupiers is also considered to be acceptable providing conditions suggested at the end of this statement are attached. This statement focuses on Energy and Sustainability.

5. Relevant Policies

5.1 National Planning Policy Framework 2021

5.2 London Plan March 2021

5.3 Camden Local Plan 2017

- Policy A1 Managing the impact of development
- Policy A4 Noise and vibration
- Policy D1 Design
- Policy D2 Heritage
- Policy CC1 Climate change mitigation
- Policy CC2 Adapting to climate change

Supplementary Guidance

- CPG Home improvements (2021)
- CPG Energy efficiency and adaptation (2021)
- CPG Design (2021)
- CPG Amenity (2021)
- Jeffrey Street Conservation Area Appraisal and Management Strategy 2002

Camden's policies on Energy and Sustainability

5.4 The requirement to justify new air conditioning units is in accordance with Policy CC2 of the Council's Local Plan 2017, which discourages the use of active cooling. Employing active cooling systems leads to heightened energy consumption and carbon emissions, conflicting with the objectives outlined in policy CC1.

5.5 Section 8.42 under Policy CC2 specifies that authorization for active cooling (air conditioning) will only be granted when dynamic thermal modelling convincingly demonstrates a compelling necessity, subsequent to the incorporation of all preferred measures as outlined in the cooling hierarchy. Section 8.43 outlines this cooling hierarchy, which encompasses:

- Minimization of internal heat generation through energy-efficient design;
- Reduction of heat ingress into a building during summer through strategies such as orientation, shading, albedo, fenestration, insulation, and green roofs and walls;
- Management of internal heat through exposed thermal mass and high ceilings;
- Passive ventilation;
- Mechanical ventilation;
- Active cooling.

5.6 As the development is for active cooling, as per policy CC2 and Energy Efficiency and Adaption CPG, schemes are required to demonstrate that other adequate measures have been considered and modelled before active cooling. In accordance with Policy CC2 of the Local Plan, the Council discourages active cooling. Using active cooling systems increases energy consumption and carbon emissions contrary to the aims and objectives of policy CC1. As a result, air-conditioning units are only permitted where thermal modelling demonstrates that there is a clear need for it after all preferred measures are incorporated in line with the London Plan cooling hierarchy. In addition, passive measures should be considered first. If active cooling is unavoidable, applicants need to identify the cooling requirement and provide details of the efficiency of the system.

NPPF

5.7 Para 153 of the NPPF (2021) states that 'Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk and the risk of overheating from rising temperatures. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.

5.8 Moreover, para 154 states that avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, which can help to reduce greenhouse gas emissions, such as through its location, orientation and design.

6. Assessment of new information by Vision Energy

6.1 The Council's Sustainability Officer has assessed the new report by Vision Energy as set out below. It is noted that this report refers to Flat 3. However the appellant's agent confirmed on 14/9/23 by telephone that this is an error and should state Flat 1.

6.2 The retention of the air conditioning units has not been justified as follows.

- The overheating analysis demonstrates that under a naturally ventilated strategy that the modelled flat passes the overheating assessment. Overheating has not been demonstrated for a sufficient proportion of any of the rooms occupied hours for them to

fail the TM59 overheating analysis. Therefore there is no justification for the installed A/C units.

- In the appellants statement it is claimed that realistically there will be limits on the opening of windows (due to security and practical concerns) which would in reality mean that the flat overheats and that there is justification for the A/C units.
- A modelled scenario with the suggested limits on opening of windows has not been presented within the overheating analysis so this claim cannot be substantiated, it is solely a supposition.
- Notwithstanding the lack of evidence for overheating. Limitations on openable windows could be mitigated by installation of lockable internal shutters for example to allow increased natural ventilation and solar shading to reduce overheating whilst maintaining the buildings security. Subject to any external design considerations, this would be the preferred passive measure to introduce in line with application of the cooling hierarchy.

6.3 The Council maintains the stance that the appellant has not succeeded in substantiating the necessity for active cooling by effectively implementing measures to curtail and alleviate dwelling overheating as stipulated in the cooling hierarchy. As a result, the appellant has fallen short of the imperative to minimize carbon dioxide emissions, a contradiction to the principles laid out in policies CC1 (Climate change mitigation) and CC2 (Climate change adaptation measures) of the Camden Local Plan 2017.

7. Grounds of appeal

Ground (a)

7.1 The appellants have submitted a report from Vision Energy to support the merits of the case and that permission should be granted. The appellant claims that the opening of windows is not feasible for security concerns. The report has been assessed by the sustainability officer as set out above and it is not considered that the development has been justified. The flat is at first floor level and there is potential for the use of security locks, shading shutters, eco fans and so on.

Ground (g)

7.2 The appellant asserts that the allocated 3-month timeframe for compliance with the notice is inadequately short and thus requests an extension to 4 months. This additional duration is deemed necessary to facilitate the arrangement of scaffolding and the instruction of technicians for the removal of the condenser units.

7.3 No substantiated evidence has been presented to elucidate the reasons behind the impracticability of completing the necessary works within the stipulated 3-month period subsequent to the decision. The council can at their discretion extend the period if sufficiently justified reasons are provided.

7.4 The council maintains the position that an extension beyond the established 3-month duration for compliance would only serve to exacerbate avoidable environmental impacts. It is argued that the granted three-month interval is ample for the organisation of scaffolding and the necessary instructions to the technicians, leading to the removal of the condenser units. In light of these considerations, the Inspector is respectfully requested that the appeal under ground (G) be dismissed.

8. Suggested conditions

Should the appeal be allowed , the following conditions are recommended.

8.1 The external noise level emitted from plant, machinery or equipment at the development with specified noise mitigation hereby approved shall be lower than the typical existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from mechanical installations/ equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017

8.2 The machinery, plant or equipment at the development shall be remounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by vibration in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

Should you have any queries, please contact the appeal officer

Ramesh.Depala@camden.gov.uk

Yours sincerely

**Deirdre Traynor
Principal appeals Officer**