



Appeal Decision

Site visit made on 10 January 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/X5210/C/23/3323537

Land at 29 Prowse Place, London NW1 9PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mrs Mirjana Cvetkovic against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 15 May 2023.
- The breach of planning control as alleged in the notice is without planning permission: installation of 2 x air condenser units on the rear elevation at roof level.
- The requirements of the notice are: 1. Permanently remove from the property the 2 air conditioning units on the rear elevation at roof level; and 2. Make good any resulting damage.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. 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 dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. There are no air condenser units on the rear elevation of the appeal building. One of the air condenser units intended to form the subject of the notice is located on the roof of the appeal building; the other is located on the side elevation of a rear outrigger of the appeal building. The submissions of all parties make it clear that there is no confusion that these are the air condensers intended to form the subject of the notice and the appeal.
2. I have the power under section 176 of the Act to correct any defect, error or misdescription in the notice, or to vary the terms of the notice, if I am satisfied that doing so will not cause injustice to the main parties. I am satisfied on the evidence that no injustice would be caused to any party if I were to correct the breach of planning control stated in the notice so that it accurately refers to the 2 air condenser units present at the site, as described above. I shall also vary the requirements of the notice accordingly.
3. The Government published a revised National Planning Policy Framework (the Framework) after appeal submissions had been made. I have not considered it necessary to consult parties on those revisions, but have taken the Framework, as revised, into account when reaching my decision.

Ground (a) and the deemed application for planning permission

4. The main issue is whether the need for active cooling is justified, with particular regard to local policies relating to the energy and cooling hierarchies.

5. The air condenser units serve Flat 3, which is a two-bedroom flat set over first and second floor levels. At first floor level, it has large openable windows on the front and rear elevations, and a large openable side elevation window on the rear outrigger. At second floor level, it has large doors which open onto a balcony and an openable rooflight. The flat can be ventilated by natural means.
6. The Overheating Analysis Report¹ (OAR) explains that thermal overheating modelling has been undertaken to determine the impact of summer overheating on Flat 3. It found that the flat passes the relevant tests set out in guidance produced by The Chartered Institution of Building Services Engineers² (CIBSE) for homes predominantly naturally ventilated. This is on the basis that windows can be opened to allow for cross ventilation.
7. There would be security concerns associated with leaving windows and balcony doors open when the flat is unoccupied or at night, but there does not appear to have been any examination of how these could be addressed. Such security concerns would not be as great as those associated with ground floor windows, as mentioned in the OAR. In any case, the evidence does not suggest it would be essential for windows and/or balcony doors to be left open all the time, including when the flat is unoccupied and/or at night, to ensure the flat complies with the CIBSE guidance.
8. Policies CC1 and CC2 of the Camden Local Plan (2017) (CLP) relate to climate change mitigation and adapting to climate change. Policy CC1 states that the Council will encourage all development to meet the highest feasible environmental standards by requiring all development to reduce carbon dioxide emissions through following steps in the energy hierarchy, amongst other things. The energy hierarchy is a sequence of steps that minimise the energy consumption of a building, as discussed in the supporting text to Policy CC1.
9. Policy CC2 of the CLP requires development to be resilient to climate change by adopting appropriate climate change adaptation measures, such as those to reduce the impact of urban and dwelling overheating, including the application of the cooling hierarchy. Active cooling, such as air condenser units, is at the bottom of the cooling hierarchy. Paragraph 8.42 of the CLP states that active cooling will only be permitted where dynamic thermal modelling demonstrates there is a clear need for it after all the preferred measures are incorporated in line with the cooling hierarchy.
10. The evidence does not demonstrate that the energy hierarchy or the cooling hierarchy mentioned by Policies CC1 and CC2 of the CLP have been followed in this case. I am unconvinced that it would be impractical or create reasonable security concerns to rely on natural ventilation to appropriately cool the dwelling. On the evidence available, the air condenser units are not reasonably required to provide ambient levels of cooling within the dwelling, and the level of carbon dioxide emissions associated with their operation is not at such a small scale as to not harm the aims of the development plan.
11. For the reasons set out above, the need for active cooling to serve Flat 3 has not been justified. As such, there is no clear need for the air condenser units which are contrary to Policies CC1 and CC2 of the CLP. Therefore, for the

¹ By Vision Energy, Rev 1, V1, dated 6 June 2023

² TM52 and TM59 (2013)

reasons given, the appeal under ground (a) should not succeed and the deemed application for planning permission should be refused.

Ground (g)

12. To succeed under this ground of appeal the appellant would need to demonstrate that the period specified in the notice to comply with its requirements falls short of what should reasonably be allowed. The notice provides 3 months for the air condenser units to be removed.
13. It is requested that 4 months is allowed for the notice to be complied with, as scaffolding would need to be erected and lead times for technicians to remove the air conditioning units can exceed 10 to 12 weeks during busy periods. I noted that the flat is not associated with the garden space at 29 Prowse Place. In light of those lead times and the need to erect scaffolding on land outside of the flat, I consider it reasonable in this instance to allow 4 months for the notice to be complied with.
14. The appeal under ground (g) therefore succeeds.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

16. It is directed that the enforcement notice is corrected and varied by:
 - (i) deleting the text 'rear elevation' at paragraph 3 of the notice and substituting the text 'side elevation of the rear outrigger and';
 - (ii) deleting the text 'THREE (3)' at paragraph 5 of the notice and substituting the text '4'; and
 - (iii) deleting the text 'conditioning units on the rear elevation at roof level' at paragraph 5 of the notice and substituting the text 'condenser units'.
17. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR