The Planning Inspectorate

Appeal Decisions

Site visit made on 10 January 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th JANUARY 2024

Appeal A Ref: APP/X5210/C/23/3320287
Appeal B Ref: APP/X5210/C/23/3320288
Land at 10 Antrim Grove, London NW3 4XR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mrs Antonia Lester (Appeal A) and Mr Philip Bloom (Appeal B) against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 2 March 2023.
- The breach of planning control as alleged in the notice is 'Without planning permission: The installation of three air conditioning units on the side of the residential property adjacent to No. 10 Antrim Grove London NVV3 4XR.'
- The requirements of the notice are to: 1. Completely remove the three air conditioning units from the side of the residential property and make good any resulting damage; and 2. Remove any resultant debris and paraphernalia from the premises as a result of the above works.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), and (f) of the Act. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decisions.

Preliminary Matter

1. 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.

Background

2. An unspecified number of air conditioning units were installed on the southwest side elevation of the appeal dwelling in 2009 ('the Original Units'). There was a fire at the appeal dwelling in March 2016 which damaged the Original Units and resulted in the whole building being refurbished. It is not disputed that at the time the Original Units were removed, at some point after March 2016, they were lawful and exempt from planning control under the provisions of section 171B(1) of the Act.

3. Three new air conditioning units ('the Replacement Units') were installed on the southwest side elevation of the appeal dwelling following the removal of the Original Units. The Council issued an enforcement notice relating to 2 air conditioning units on 22 September 2020 ('Notice A'). The alleged breach of planning control in Notice A was imprecise because it was unclear which 2 of the Replacement Units it referred to. Notice A was therefore withdrawn by the

Council on 6 July 2021. The Council issued the enforcement notice the subject of this appeal on 2 March 2023 ('Notice B').

The Notice

4. It is incumbent on me to get the notice in order. Section 176 of the Act provides that I may correct any defect, error or misdescription in the notice if I am satisfied that doing so would not cause any injustice to the main parties. The Replacement Units are described as being 'on the side of the residential property adjacent to No.10 Antrim Grove' in the notice. They are located on the side elevation of 10 Antrim Grove. I shall correct the notice to ensure it refers to the Replacement Units in more concise language in the interests of clarity. This will not cause injustice to any parties.

Ground (b)

5. To succeed under this ground of appeal the appellants would need to demonstrate that the breach of planning control alleged in the notice has not occurred.

6. The Replacement Units have been installed as described in the notice. It is claimed the Replacement Units were not installed 'within the last 4 years' as specified in the reasons for serving the notice at section 4 of the notice.

7. The breach of planning control alleged in the notice does not refer to when the Replacement Units were installed. The breach of planning control alleged in the notice has occurred, as a matter of fact.

8. The appeals under ground (b) must therefore fail.

Ground (c)

9. To succeed under this ground of appeal the appellants would need to demonstrate that the breach of planning control alleged in the notice does not constitute a breach of planning control. The onus is on the appellants to demonstrate this is the case, on the balance of probabilities.

10. Section 57 of the Act explains that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act provides the meaning of 'development', which includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 55(2)(a)(ii) provides that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building shall not be taken to involve development of the land.

11. There is no dispute that the installation of the Replacement Units fell within the meaning of development defined at section 55(1) of the Act, and that planning permission does not exist for the development. Furthermore, it is not disputed that the Original Units were lawful at the time they were removed. The main issue is whether the installation of the Replacement Units should not be taken to involve development of the land under the provisions of section 55(2)(a)(ii) of the Act, considering the apparent lawfulness of the Original Units.

12. The precise date(s) when the Original Units were removed and when the Replacement Units were installed has/have not been provided, although I note that the Replacement Units are claimed to have been installed in September

2017[1]. The quotation and invoice provided by MTP Cooling Ltd[2] suggest that installation of the Replacement Units would not have taken place until after 19 September 2017, as payment of the first 50% of the quotation was requested to be paid on that date, before work had started. Statutory declarations refer to rebuild and reinstatement works following the fire at the site as a single process. However, there is a lack of sufficiently clear and unambiguous evidence to show, on the balance of probabilities, that the removal of the Original Units and the installation of the Replacement Units were carried out as a single act of development.

13. I have been provided with descriptions and photographs of the Original Units, but there is a lack of clear and unambiguous evidence relating to their number, specification(s), size(s), and positions. The appellants have confirmed the Replacement Units are not exactly the same as the Original Units due to the age and discontinuance of the particular model of the Original Units.

14. A photograph of the Original Units dated 13 March 2016[3] ('the 2016 Photograph') appears to show at least 2 air conditioning units, the tops of which do not appear to extend above a cornice which separates the brickwork and rendered finishes of the ground and first floors of the appeal dwelling. The 2016 Photograph shows the Original Units appear to have been single cassette air conditioning units, positioned a number of brick courses below the cornice. They may have been double cassette units in width, but this is not clear from the angle at which the 2016 Photograph was taken. The southwest side elevation wall of the appeal dwelling has a staggered arrangement, and the 2016 Photograph shows one of the Original Units was fixed to the central extent of that staggered wall, and at least one other was fixed to the front extent of that staggered wall.

15. The Replacement Units comprise 2 double cassette units in height and a single cassette unit, positioned forward of a downpipe on the front extent of the staggered side elevation wall. The tops of the 2 double cassette units are roughly consistent with the top of the cornice. The top of the single cassette unit is approximately in line with an angled horizontal rainwater pipe.

16. The evidence indicates, on the balance of probabilities, that the Replacement Units are greater in number and size than the Original Units. It also indicates that the Replacement Units have been positioned higher up the side elevation wall of the appeal dwelling, with the tops of the 2 double cassette units being at least a few brick courses higher than the tops of the Original Units. Based on what I saw during my site visit, alongside the evidence, it appears more likely than not that the Original Units were positioned in significantly different locations on the side elevation of the appeal dwelling, further away from side elevation windows at 12 Antrim Grove, and below the cornice.

17. These differences between the Original Units and the Replacement Units are significant and have notable implications for the external appearance of the appeal dwelling in views from 12 Antrim Grove and the public highway. The installation of the Replacement Units therefore comprised a material alteration to the external appearance of the building, even if the Original Units were removed and replaced by the Replacement Units as part of a single operation.

[1] Tab 21 of Exhibit AJL-2, of the appellants' evidence
[2] Tabs 9 – 11 of Exhibit SJL-2, of the appellants' evidence
[3] Appendix 2 of the Council's evidence

18. The installation of the Replacement Units comprised development requiring planning permission. That development was carried out without the benefit of planning permission, in breach of planning control.

19. The appeals under ground (c) must therefore fail.

Ground (d)

20. To succeed under this ground of appeal the appellants would need to demonstrate that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control alleged in the notice. The onus is on the appellants to demonstrate this is the case, on the balance of probabilities.

21. Section 171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

22. Subsection (4)(b) confirms that subsection (1) of section 171B does not prevent further enforcement action being taken in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the local planning authority take or purport to take enforcement action in respect of that breach.

23. The statutory declaration of Tomasz Polak indicates the Replacement Units were installed in or about September 2017. This is consistent with some evidence, but conflicts with other evidence. In this regard, I assign greater weight to this statutory declaration than the evidence it conflicts with on account of Mr Polak being closely involved in the installation of the Replacement Units, him making the statutory declaration under oath, and its relevant clarity and consistency with other coherent evidence referred to above.

24. The Council either took enforcement action, or at least purported to take enforcement action, in respect of the Replacement Units when it issued Notice A on 22 September 2020. The installation of the Replacement Units would have needed to have been substantially complete by 22 September 2016 for them to be exempt from planning control under the provisions of section 171B when Notice A was issued. This has not been demonstrated, on the balance of probabilities.

25. Notice B was issued on 2 March 2023, which was within 4 years of when Notice A was issued. Notice B appears to have been issued more than 4 years after the Replacement Units were installed. Reference at paragraphs (a) and (e) of section 4 of Notice B to the breach of planning control taking place within 4 years of the date of the notice being issued are therefore erroneous, but they do not render the notice invalid or a nullity.

26. The Council were not prevented from taking further enforcement action against the Replacement Units when it issued Notice B. It follows that at the date Notice B was issued, enforcement action could be taken against the Replacement Units.

27. The appeals under ground (d) must therefore fail.

Ground (a) and the deemed applications for planning permission

28. It would be inappropriate for me to consider the planning merits of the Replacement Units against what the appellant has referred to as the baseline position of the Original Units. This is because any lawfulness which applied to the Original Units under the provisions of section 171B of the Act ceased, and has since been lost, when they were removed. It is therefore appropriate to assess the planning merits of the Replacement Units against a baseline of no air conditioning units at the site, with regard to the development plan currently in place and any other material considerations.

29. With the above in mind, the main issues are:

- Whether the Replacement Units comprise the adoption of appropriate climate change adaptation measures, with particular regard to the cooling hierarchy;
- The effect of the Replacement Units on the living conditions of residents of 12 Antrim Grove, with particular regard to noise and disturbance; and
- The effect of the Replacement Units on the character and appearance of the area, with particular regard to the Belsize Conservation Area (CA).

Climate Change Adaptation Measures

30. Policy CC2 of the Camden Local Plan (2017) (CLP) requires development to be resilient to climate change and that it should adopt appropriate climate change adaptation measures, such as those to reduce the impact of urban and dwelling overheating, including the application of the cooling hierarchy. The cooling hierarchy is set out in the supporting text to Policy CC2. This also explains that the use of air conditioning (active cooling), which increases demand for energy and makes local micro-climates hotter, will be discouraged, and that air conditioning will only be permitted where dynamic thermal modelling demonstrates there is a clear need for it after all of the preferred measures are incorporated in line with the cooling hierarchy. Active cooling is at the bottom of the cooling hierarchy.

31. No information has been provided to suggest the cooling hierarchy has been applied as part of the installation of the Replacement Units. I have also not been provided with dynamic thermal modelling to demonstrate a clear need for active cooling. It has not therefore been shown that the increased energy demand and heat expelled from the appeal building during the operation of the Replacement Units is justified or that the development comprises the adoption of appropriate climate change adaptation measures. For these reasons, the Replacement Units fail to accord with Policy CC2 of the CLP.

Living Conditions

32. The Replacement Units are opposite side windows which serve 12 Antrim Grove. At least one of those windows appears to be openable, but it is unclear what type of rooms those windows serve. The distance between the Replacement Units and the windows is such that there is potential for the air conditioning units to affect the living conditions of residents of 12 Antrim Grove on account of noise and heat emissions from the units.

33. The Noise Impact Assessment[4] (NIA) identifies the closest noise sensitive receiver as a first floor window at 12 Antrim Grove, described as being located approximately 7 metres from the Replacement Units. Figure 2.2 of the NIA indicates that window is located on the front elevation of 12 Antrim Grove. The evidence does not explain why one of the side elevation windows should not be taken as the closest noise sensitive receiver.

34. The NIA concludes that noise emissions from the Replacement Units would not have an adverse impact on the nearest residential receivers provided that a noise control strategy is followed. This could be secured by condition. However, it is unclear whether the NIA has considered whether a noise control strategy would be sufficient with regard to the side elevation windows which serve 12 Antrim Grove.

35. A resident of 12 Antrim Grove alleges that hot air is blown into that dwelling by the Replacement Units. This has not been disputed. I can see how this may be possible, considering the positions of the Replacement Units in relation to windows at 12 Antrim Grove which appear to be openable. No assessment has been carried out to suggest that this may not cause unacceptable harm to the living conditions of residents of 12 Antrim Grove and no measures have been put forward which may alleviate any such harm.

36. On the evidence provided, it appears likely that the noise and heat emissions of the Replacement Units are capable of causing unacceptable harm to the living conditions of residents of 12 Antrim Grove. I am unable to conclude that any such harm could be addressed by a planning condition, even if the plant is seldomly used at night. The development therefore conflicts with Policies A1 and A4 of the CLP. These require, amongst other things, the quality of life of neighbours to be protected, with permission only being granted for development which would not cause unacceptable harm to amenity.

Character and Appearance

37. The appeal site is located within the CA. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA.

38. The Conservation Area Statement[5] explains that the character of the CA is largely derived from mid-19th century Italianate villas, amongst a number of distinct areas of varying character and appearance. Buildings on Antrim Grove are of a mixed character, including 2-storey pairs of early-20th century semi-detached houses and a 3-storey terrace of late-20th century houses. Six-storey blocks of flats sit either side of the junction of Antrim Grove with Haverstock Hill, while 3-storey late-19th century houses line Antrim Road to the south. In general, and so far as relevant to the appeal, the significance of the CA lies in its mix of high quality buildings which create an attractive and pleasant, uncluttered residential environment.

39. The top parts of 2 of the Replacement Units can be seen from the street. They are minor features, partially hidden down the narrow gap between 10 and 12 Antrim Grove, behind fencing. In their current form, their modern functional

[4] The appellant's Exhibit AJL-2: Planning Compliance Report by KP Acoustics Ltd., Ref: 21500.PCR.01, dated 15 October 2020
[5] Belsize, April 2003, by the Council of the London Borough of Camden

appearance is at odds with the more refined, neatly arranged and uncluttered character and appearance of the area. This causes less than substantial harm to the significance of the CA, which is not outweighed by any public benefits, in the context of chapter 16 of the Framework.

40. Their minimal adverse impact on the character and appearance of the CA could easily be addressed by a basic visual enclosure, details of which could be required to be approved by condition. This would ensure the development would preserve the character of the CA and cause no harm to its significance.

41. Policy D1 of the CLP seeks to secure high quality design and requires development to respect local context and character by preserving or enhancing the historic environment and heritage assets, amongst other things. I am therefore satisfied that any conflict with Policy D1 of the CLP and any harm to the significance of the CA could be addressed by a planning condition, which would preserve the character of the CA.

Other Matters

42. I have been referred to a number of air conditioning units which have been granted planning permission[6] by the Council in the local area. I have been provided with very limited details of those decisions and the circumstances of each case. The information provided does not indicate that any of those air conditioning units share the same specific circumstances as the Replacement Units. The Council's decisions referred to do not lead me to any different conclusions on the main issues in this case.

Conclusion on the appeals under Ground (a) and the deemed applications for planning permission

43. The development does not adopt appropriate climate change adaptation measures, in conflict with Policy CC2 of the CLP. It also appears likely to cause unacceptable harm to the living conditions of residents of 12 Antrim Grove by way of noise and disturbance, in conflict with Policies A1 and A4 of the CLP. On the evidence provided I am unconvinced that this conflict could be addressed by conditions. There are no other material considerations which indicate I should determine the deemed applications for planning permission other than in accordance with the development plan. Therefore, for the reasons given, the appeals under ground (a) should not succeed and the deemed applications for planning permission should be refused.

Ground (f)

44. To succeed under this ground of appeal the appellants would need to demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.

45. The notice requires the air conditioning units to be removed and any resulting damage to be made good. The purpose of the notice is to remedy the breach of planning control, rather than any injury to amenity.

46. It has been suggested that the air conditioning units could be moved, clad, and fitted with acoustic enclosures. While this may reduce the effect of the air

[6] The Council's refs: 2020/2383/P, 2020/2222/P, 2019/6384/P, 2019/2713/P

conditioning units on the living conditions of neighbours, there is a lack of evidence to show this would be sufficient to reduce the level of likely harm to acceptable levels. Furthermore, it is unclear where the Replacement Units could be moved to. In any case, such actions would not address the conflict with Policy CC2 of the CLP identified above, nor would they achieve the purpose of the notice.

47. The appeals under ground (f) therefore fail.

Conclusion

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

Formal Decisions

49. It is directed that the enforcement notice is corrected by deletion of the text 'the residential property adjacent to' at section 3 of the enforcement notice. Subject to the correction, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR