



Appeal Decision

Site visit made on 5 December 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2023

Appeal Ref: APP/X5210/C/23/3314141

Basement and Ground Floor, 185-187 Haverstock Hill, London NW3 4QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr T Hussain on behalf of Lit Retail Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice was issued on 2 December 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission: Installation of refrigeration plant and enclosure at rear, ground floor level, of premises.
 - The requirements of the notice are:
 1. Permanently remove the refrigeration plant and enclosure and make good any resulting damage.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) 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.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in December 2023 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.
3. During my site visit, I also viewed the development from the second floor flat at 185-187 Haverstock Hill. I shall return to this matter later in my decision.

The appeal on ground (c)

4. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.

5. Under this ground of appeal, the appellant considers that the property already had plant located in the same position which was older and noisier, and he has simply upgraded and replaced the old units, with modern less noisy units which would not need planning approval. However, no further corroborating evidence has been submitted to substantiate this claim.
6. Under s55(1) of the 1990 Act, 'development' comprises 'two limbs':
 - 1) The carrying out of building, engineering, mining, or other operations in, on, over or under land (operational development);
 - 2) The making of any material change in the use of any buildings or other land.
7. It is clear that the allegation is referring to 'operational development,' and that the installation of refrigeration plant and enclosure relates to a 'building operation.' Operational development' comprises activities which result in some physical alteration to land which has some degree of permanence. The term 'building operations' is defined for the purposes of the 1990 Act in s55(1A) as including:
 - (a) demolition,
 - (b) rebuilding,
 - (c) structural alterations of or additions to buildings, and
 - (d) other operations normally carried on by a person in business as a builder. The list is not exhaustive.
8. S55(2)(a) of the 1990 Act excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which:
 - (i) affect only the interior; or
 - (ii) do not materially affect the external appearance of the building. (Materially affecting the external appearance means an impact capable of having some effect in planning terms.)
9. With regard to s55(2)(a)(i), the plant and enclosure do not affect only the interior of the building. Turning to s55(2)(a)(ii), the plant and enclosure have a utilitarian and functional appearance and is located where they are visible from public vantage points on Glenloch Road. As a matter of fact and degree, these works materially affect the external appearance of the building as a whole, and therefore are not exempt from the definition of 'development' under s55(2)(a).
10. Furthermore, the Council state that there is no planning history for the former plant equipment at this site but accept that photographic evidence shows that in 2014 smaller air conditioning (AC) units were affixed to the rear elevation of the site, but that these were removed sometime between January and August 2021, prior to the installation of the current plant and enclosure. In addition, the current plant and associated booster unit are materially different to the previous two air condition units in so far as the main refrigeration plant is larger than the previous, and fixed to the floor, within an enclosure closer to the junction with Glenloch Road. Furthermore, the booster unit is in a different position to previous AC units. Furthermore, given the plant equipment and

housing has changed they are likely to have different noise levels than the former units, and thus are materially different than the previous units.

11. I therefore find that, on the balance of probabilities, the matters stated in the notice amounts to a building operation for the purposes of s55 of the 1990 Act. Planning permission is required for this development. There is none in place, and the works are not permitted development. Therefore, based on all the evidence before me, there has been a breach of planning control and the appellant has not discharged the onus to demonstrate otherwise.

12. Accordingly, the appeal fails on ground (c).

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

13. The main issues are:

- the effect of the development on the living conditions for neighbouring occupiers on Haverstock Hill and Glenloch Road, with particular regard to noise and disturbance; and
- whether the development preserves or enhances the character or appearance of the Belsize Conservation Area (BCA).

Reasons

Living condition for neighbouring occupiers – noise and disturbance

14. The site relates to a ground floor and basement commercial unit within a four storey, plus basement corner building located on the junction of Haverstock Hill and Glenloch Road. The appeal premises was formerly a Bank but has recently been converted to a convenience store. This part of Haverstock Hill forms part of the designated Neighbourhood Centre in the Camden Local Plan, 2017 (LP), which cater for the day-to-day shopping and service needs of their local populations and comprises mainly commercial and community uses at ground floor level with predominantly residential uses on upper floors. The appeal relates to the installation of the refrigeration plant and enclosure, located in the rear accessway to the upper floor flats.

15. I appreciate that the former bank had similar AC units, and that plant and machinery are part and parcel of most commercial uses. Nevertheless, I observed when walking along Glenloch Road, and away from the much busier Haverstock Hill that background noise levels noticeably fall, and the development is also located close to the residential properties along Glenloch Road, and the residential flats on the upper floors of the appeal site. As such, the rear part of the appeal site on Glenloch Road has a more quiet and residential character, where noise levels are likely to be relatively lower, and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of new plant/machinery.

16. Furthermore, the previous units were only in operation during office/bank hours and did not cause a nuisance to neighbours whereas the current refrigeration plant is louder, has an intermittent tonal character and operates during the day and at night and weekends. Environmental Health officers have witnessed the noise at night and consider it a statutory nuisance and have

served an abatement notice under s80 of the Environmental Protection Act 1990.

17. An acoustic report¹ has been submitted by residents of the flats above the refrigeration plant, which highlights that the plant runs intermittently throughout the day and night, 7 days per week, and that it also emits a specific “drone” during a part of their operating cycle, which is particularly annoying and disturbing to nearby residents, affecting their sleep. The Report concludes that the noise levels from the plant is excessive and exceed Camden’s noise policy limits.
18. Whilst the appellant’s consultant² accepts that sound from the plant is currently noticeably tonal at nearby dwellings and does require attenuation, they consider that the survey data shows an excess of around 16 dBA, but the residents’ consultant’s reports claims that the excess is around 30 dBA. Notwithstanding this, the appellant accepts that the plant requires attenuation, and he has failed to submit an acoustic report to demonstrate that noise and vibration levels are within acceptable limits in accordance with planning policy.
19. Furthermore, I witnessed that the freezer unit produced a constant drone, which was audible from the bedroom window of the second floor flat above. I consider that the noise from the refrigeration plant unit at night, when background noise levels are typically lower, are likely to be more intrusive and consequentially more harmful. In addition, noise from the plant is expected to be particularly harmful during summer months when neighbouring occupiers are likely to have windows open for ventilation.
20. In the absence of any noise report, I conclude that the development fails to provide acceptable living conditions for the neighbouring occupiers on Haverstock Hill and Glenloch Road, with particular regard to noise and disturbance. Accordingly, the development conflicts with policies A1 and A4 of the LP. Amongst other things, these state that the Council will seek to protect the quality of life of neighbours and will not grant permission if the development causes unacceptable harm to amenity and that noise and vibration levels will be taken into account; and that Camden will not grant planning permission for development likely to generate unacceptable noise and vibration impacts.
21. Finally, the development is contrary to paragraph 135 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Belsize Conservation Area (BCA)

22. The site lies within the BCA. With regards to the effect on designated heritage assets, Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
23. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph

¹ External Condenser Unit Noise Measurement Report prepared by PC Environmental Consultants dated 6 March 2023.

² Letter from Acoustical Control Engineers and Consultants dated 5 April 2023.

- 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 206 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
24. The Belsize Conservation Area Statement, 2003 (BCAS) states that within the BCA there are six sub-areas, each with their own distinct and broadly uniform character. The appeal site is located within the Glenloch-sub area, which is broadly characterised by Edwardian terraced housing developed by the Glenloch Insurance Company close to Belsize Park Underground Station and Haverstock Hill.
25. 'Belsize Parade' (Nos 147-169 and 171-183 and 185-189 Haverstock Hill) are late C19 terraces of four storeys forming a local shopping parade with flats above, contemporary with and in a similar style to the Glenloch area to the west. A set-back building line creates a broad pavement which is enhanced by a continuous row of mature trees. These buildings form an attractive and coherent group which is visually and historically integrated with the Glenloch development.
26. To the rear, the houses along Glenloch Road, are two storey red brick terraces with a basement and an attic storey within a slate-faced mansard. At roof level the party walls are expressed as upstands with shared chimneys located at the ridge that step up the street. The terraces are of similar design but show variations. All have three light, two storey bays and dormers and utilise render and white painted timber frames to provide contrast. Indeed, I observed that the detailed design and use of traditional materials give strong rhythm and consistency to buildings within the BCA.
27. In contrast, the current unauthorised development, comprises the unpainted timber enclosure, which is at odds with the more traditional materials found elsewhere on the appeal building and BCA generally. The prominence of the unauthorised development is accentuated by its visibility from public vantage points on Glenloch Road. Whilst a further plan has been submitted at the final comments stage, which the appellant considers complies with the Council's requirements, this does not illustrate the detailed design and materials of any such enclosure. Therefore, this does not demonstrate that the proposal would satisfactorily integrate with the existing traditional building and BCA.
28. Therefore, despite the current development being located to the rear of the property, the unauthorised development diminishes unacceptably the character and appearance of the host building with consequent harm to the character and appearance of the BCA.
29. In the terms of the Framework and paragraph 208, the harm that the development causes to the significance of the designated heritage asset, which is the BCA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development. I appreciate that the development provides a benefit to the local business and the appellant states that without them the supermarket will not be able to operate. However,

the benefits of the development in these respects are insufficient, in my view, to outweigh the harm I have identified to the BCA, and to which I afford considerable importance and weight. Furthermore, there are also alternative design options for the enclosure which could be explored, in consultation with the Council, without causing harm to the BCA.

30. I therefore conclude that the unauthorised development results in a visually discordant and incongruous addition, which is harmful to the character and appearance of the BCA, as a whole. As such, it fails to preserve or enhance the character or appearance of the BCA, contrary to policies D1 and D2 of the LP. Amongst other things these state that the Council will seek to secure high quality design in development and will require that development: a. respects local context and character; b. preserves or enhances the historic environment and heritage assets, including conservation areas.
31. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it would not preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

Other Matters

32. The appellant has applied for planning permission for the retention for the refrigeration units³. However, the Council advise that that application remains invalid and underdetermined as they are awaiting further details and plans from the appellant.
33. I also note that the wooden enclosure has also been modified since the Council served the enforcement notice. In any event, these changes do not overcome the harms outlined above, and the design and noise attenuation remains unsatisfactory.

Conclusion on Ground (a) and the Deemed Planning Application

34. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

The Appeal on Ground (f)

35. The appeal on this ground is "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 (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
36. The enforcement notice requires the removal of the plant and enclosure. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
37. The appellant states that the removal of the units is excessive as this will lead to the closure of the shop, and a lesser step would be to agree a revised design so that the noise and vibration levels meet the Council's policies. However, I have already considered this under the ground (a) appeal and have found that

³ Council ref: 2022/3337

no alternative scheme has been approved that would overcome the harms identified. Indeed, it is open to the appellant to apply for planning permission for new AC units if they so wish.

38. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.

39. On this basis, the Ground (f) appeal fails.

The Appeal on Ground (g)

40. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 1 to 4 months, so that an alternative design solution can be agreed with the Council and implemented.

41. I have identified under the ground (a) appeal that the development results in harm to the living conditions of neighbouring occupiers, with regard to noise and disturbance, and also harm to the character and appearance of the BCA. Therefore the 4 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements. Therefore, the 1 month given, would be reasonable and proportionate time to comply with the notice.

42. On this basis, the appeal on ground (g) fails.

Conclusion

43. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR