Enforcement Appeal; Statement of Case

40 Hillway, London, N6 6HH

Contents

1. Introduction

1.1 This enforcement appeal statement is submitted in support of an appeal against the notice dated 25th January 2024 in relation to the following development situated at 40 Hillway, London, N6 6HH.

'Installation of 3 x air condenser units to the rear roof of the single storey ground floor extension'.

1.2 The enforcement notice was issued for the following reasons:

'a) The development has occurred within the last 4 years;

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

c) The 3 air conditioning units, by virtue of their size, design and location cause harm to the character and appearance of the host building and the wider Holly Lodge Conservation Area, contrary to Policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017 and Policy DH1 and DH2 of the Hampstead Neighbourhood Plan 2018.'

1.3 The notice required that within one month of the notice taking effect (8th March 2024):

1. Completely remove the 3 air conditioning units; and

2. Remove any resulting debris from the site and make good any resulting damage.

1.4 The enforcement notice followed refusal of planning permission (2023/2242/P) for the following development and sought to enforce against the air condenser units only. For context, the planning decision was in relation to the following description:

'Installation of 3 x air condenser units with acoustic enclosure to the rear roof of the single storey ground floor extension. Part retrospective.'

1.5 The planning application was refused on the 20th of December 2023 for the following reasons:

1. *The proposal has 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.*

2. *The proposed external condenser unit and acoustic enclosure, by virtue of their size, design and location would add visual clutter to the detriment of the character and appearance of the host building and the wider Holly Lodge Conservation Area, contrary to Policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017 and Policy DH1 and DH2 of the Highgate Neighbourhood Plan 2018.*

1.6 This statement sets out the appellant's case for the enforcement appeal, in relation to each ground. These are stated succinctly below:

- Ground (a) -
  The enforcement notice ought to be quashed and planning permission granted for the air conditioning units (AC) as they do not increase carbon emissions for the site, as set out in the expert Overheating Assessment in planning application (2023/2242/P).

  The proposal results in no increase in carbon dioxide emissions with the addition of the AC units, based on home improvements which counteract any change, to ensure no change from the emission percentage prior to installation of the AC unit.

  The Council has applied policy that is not relevant to the proposals. This is not a major development and should not be considered under the cooling hierarchy in The London Plan.

  The AC units result in no harm to the Holly Lodge Estate within the Holly Lodge Conservation Area, continuing to preserve the character and appearance of the property, the estate, and the significance of the wider Conservation Area.

  The location of the AC units to the rear of the site, do not result in visual clutter, they are within extremely, limited, private views. There is no public view impact.

  There are exceptional circumstances, specifically the occupier's medical condition, justifies the need for active cooling.

- Ground (c) -
  The proposal does not constitute a breach of planning control as the alteration to a roof does not breach the limits of an 'extension' as per the permitted development regulations. In addition, the proposal does not constitute development.

- Ground (f) -
  The remediation of the suggested breach of planning control is that the condensers can be housed in an acoustic enclosure, resulting in limited visual impact and no impact on residential amenity. The acoustic enclosure is part of the planning application refusal that is conjoined with this enforcement appeal.

- Grounds (g) -
  The Appellants request that any compliance period should be a minimum period of 6 months to ensure a reasonable timescale for the organisation of trades people and the completion of the works required.

1.7 This statement should be read in conjunction with the drawings and documents submitted in support of the enforcement appeal (APP/X5210/C/24/3340242), as well as the linked planning appeal (APP/X5210/D/24/3340566), in particular the Planning Appeal Statement, dated March 2024.

1.8 This statement will not re-attach the drawings and documents submitted in support of the linked planning appeal unless they are directly relevant to the grounds of appeal. The statement will provide the appellant's response to the reasons for issuing the enforcement notice, set out under each relevant ground of appeal.

2. Matters Not In Dispute

2.1 The following matters are considered to be agreed between the Local Planning Authority (LPA) and the Appellant and do not form part of a reason for refusal:

- The proposals do not cause any adverse impact on the residential amenity of neighbouring occupiers. There would be no adverse impact on neighbouring residents in terms of noise and vibration. Two compliance conditions are suggested by the council in relation to the council's noise criteria and are accepted as such.

- Due to the modest scale and rear siting of the unit, there is no adverse impact relating to outlook, daylight, or sunlight.

3. Relevant Planning History & Policy

3.1 Please refer to the Planning Appeal Statement under Planning Appeal Reference: (APP/X5210/D/24/3340566).

4. Grounds of Appeal

4.1 The Appellant seeks to appeal the enforcement notice dated 25th January 2024, in relation to the address and reference noted above. The grounds of appeal that apply to this case are, grounds (a), (c), (f), and (g) of Section 174(2)(a) of the Town and Country Planning Act. On behalf of the Appellant, we set out the response to each ground below.

Grounds of Appeal (a)

4.2 Section 174(2)(a) of the Town and Country Planning Act says "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged."

4.3 Much of the ground (a) appeal case is set out in the Planning Appeal Statement submitted with the planning appeal. This is conjoined to this enforcement appeal, so the Inspector's attention is drawn to that document, which is relied upon here.

4.4 Planning permission ought to be granted for the AC units as they do not increase carbon emissions for the site as a whole, as set out in the expert Overheating Assessment in planning application (2023/2242/P). This is appended to the linked Planning Appeal Statement and should be reviewed as part of the enforcement appeal. This is in relation to the whole house refurbishment, specifically the installation of insulation throughout. This is discussed in detail in the Planning Appeal Statement paragraphs 4.1 – 4.12 and 4.17 and 4.18.

4.5 Also, the proposal should not need to be considered under the cooling hierarchy. This policy is only applicable for major development proposals as per London Plan policy SI4, and Local Plan Policy CC2. These policies are therefore not applicable in the assessment of this application for householder development. The Inspector's attention is drawn to paragraphs 3.4 – 3.6 of the Planning Appeal Statement and 4.4 – 4.6 for the appellant's case that the Council has inappropriately applied policy that is not relevant to the proposals that are subject to this appeal.

4.6 Furthermore, in this case, the need for active cooling must also be considered in relation to exceptional circumstances, specifically the Appellant's medical condition. Please refer to paragraphs 4.14 – 4.16 of the Planning Appeal Statement, including the Doctor's Letter dated 02.01.24.

4.7 As discussed in the Planning Appeal Statement, the Appellant suffers [redacted]

4.8 Since submission of the planning appeal, the Appellant has been able to provide further evidence in the form of a Doctor's [redacted] Report dated 05.04.24 and a further Doctor's Letter dated 22.04.24. These confirm further detail of the Appellant's [redacted] The London [redacted] Clinic support the installation of air conditioning [redacted] The doctor also [redacted] Lasty, the Doctor's Letter dated 22.04.24 confirms that the Appellant suffers from an [redacted] These letters are appended to this statement as **Appendix 1** and **Appendix 2**.

4.9 This means that the option to open a window to manually regulate the internal temperature of the property is not possible or realistic for the appellant. It is simply not an option. Weight should be given to this exceptional circumstance in the justification for the need for active cooling, in addition to the technical aspects

noted above and discussed within the Energy and Overheating Assessment. These exceptional circumstances outweigh policies CC1 and CC2, should they apply, although it is considered that these policies are not relevant.

4.10 Moreover, planning permission ought to be granted as the AC units continue to preserve the character and appearance of the host building and the wider Holly Lodge Conservation Area. They have no impact whatsoever on the significance of this heritage asset. The proposals are at the lower levels of the building where there is already change taking place.There is no negative impact on limited views from within or outside of the site, or from within the Conservation Area, due to the proposals modest size, design and sensitive rear location, hidden from view. This is discussed further in detail in paragraph 5.1 – 5.11 of the Planning Appeal Statement.

4.11 Whilst we consider that the AC units should be granted planning permission on their own merits, because they do not breach planning policy, and can be considered to accord with the relevant Development Plan, this may be a rare situation where a personal planning permission could be considered due to the exceptional circumstances of the occupier. We ask that a personal permission is considered by the Inspector.

4.12 Therefore, the appeal should succeed on ground (a).

Grounds of Appeal (c)

4.13 Section 174(2)(c) says "that those matters (if they occurred) do not constitute a breach of planning control".

4.14 The proposal does not constitute a breach of planning control because of the following.

4.15 Section 55 of the Town and Country Planning Act 1990 part (2) (a)(ii) discusses the meaning of "development". For the purposes of the Act, carrying out improvement or other alterations of any building works which "do not materially affect the external appearance of the building," do not constitute development.

4.16 It is reasonable to assess this as such as there is no impact on the appearance of the host building as a whole, as there are no significant views of the AC units. This is discussed in ground (a) above and the Planning Appeal Statement. Therefore, there is no breach of planning control.

4.17 Furthermore, this approach was taken on appeal (reference APP/X5210/C/00/1042558) dated 4th October 2000). This appeal decision is provided at point 3 of the Appendix.

4.18 The appeal was brought by Atelier London Ltd against London Borough of Camden Council. The site was located at Garden Studios, 11-15 Betterton Street, London. The appeal was lodged following an enforcement noticed issued on 21st March 2000 for the installation of 17 air conditioning units.

4.19 Discussion is raised in the appeal relating to building works which 'do not materially affect the external appearance of the building' and how this should be applied. See paragraphs 5 – 9 of the appeal decision attached.

4.20 The phase "do not materially affect the external appearance of the building," 'was taken to imply that the change in appearance must be visible from a number of vantage points; visibility from the air or from a single building would not be sufficient; it had to be judged for its materiality in relation to the building as a whole and not be referenced to a part of the building taken in isolation' (Paragraph 6 of Appendix 3).

4.21 Upon review of the supporting documentation, planning appeal, and visiting the site, it is clear that the units cannot be seen at street level. There may be partial views but the effect on the appearance of the building

will be insignificant. Furthermore, the side of the property is not visible from the street as this is screened by the staggered rear building lines and rear extensions of No.42 and 38 Hillway. It is reasonable to note that the units could be noticeable from the adjacent neighbours gardens should one be located to the very rear of the garden, or through opening a rear window, leaning out, and purposefully looking at the rear elevation and AC units at No.40 Hillway. Also, these could be viewed by purposefully looking up and back towards No. 40 through the two ground floor side windows of No.42 Hillway. It is reasonable to suggest that these are not 'significant vantage points,' as views should not be intentionally created or awkward for the viewer. These views are limited and restricted from the rear of the site in private, restricted angles.

4.22 Therefore, it is considered that the units have no impact on the appearance of the building as a whole as there are no significant views of the AC units. The appellant has carried out works for the improvement or alteration of the building which do not materially affect the external appearance of the building.

4.23 The works consequently do not amount to development, as per the meaning noted in Section 55 of the Town and Country Planning Act 1990 part (2) (a)(ii). Therefore, there has been no breach of planning control.

4.24 In addition, should the Inspector consider the installation of the AC units, development, then this could only be considered permitted development.

4.25 Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") as amended, structures the permitted development rules in relation to 'enlargement, improvement or other alteration of a dwellinghouse', such as side and rear extensions, as well as alterations, including windows and doors. The following criteria are considered relevant, and to which the proposal complies.

4.26 <u>A.1 Development is not permitted by Class A if –</u>

a) N/A (change of use)

b) N/A (ground coverage)

c) Complies – The proposal does not exceed the height of the highest part of the roof of the existing dwellinghouse. This being the ridge of the main dwellinghouse.

d) Complies - The proposal does not exceed the height of the eaves of the existing dwellinghouse.

e) Complies – The proposal does not extend beyond a wall which forms the principal elevation (in this case the front wall), to a wall that front a highways and forms a side elevation of the original dwellinghouse.

f), g), h), i), j) N/A (Regarding rear and side extensions)

k) Complies – The proposal does not include a veranda, balcony, antenna, chimney/ flue alterations, or any part of the roof of the dwellinghouse.

<u>A.2 In the case of the dwellinghouse on article 2(3) land, development is not permitted by Class A if -</u>

a), b) and c) N/A (Regarding cladding the dwellinghouse, and side or rear extensions)

A.3 Development is permitted by Class A subject to the following conditions –

a), b) and c) N/A (Regarding materials, upper floor windows, and extensions)

4.27 The AC units do not breach the limits of an 'extension' as per Class A of the Order, and therefore it is considered that planning permission is not required. Consequently, there is no breach of planning control, and the appeal should succeed on ground (c).

Grounds of Appeal (f)

4.28 Section 174(2)(f) says "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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach." The enforcement notice should be varied in accordance with the following solutions.

4.29 The air conditioning units could be housed in an enclosure, and this would reduce any visual impact, should it be considered that there is any impact. As noted above, an application for the AC units in an enclosure, was submitted to the Council and recently refused. An appeal was submitted against this submission and is linked to this enforcement appeal. Clement Acoustic's calculations show that with the recommended acoustic mitigation installed, noise emissions from the plant units will meet the requirements of Camden London Borough Council.

4.30 Furthermore, in addition to meeting the requirements of the set noise criteria at 30 dB(A), the emissions from the proposed plant would be expected to meet the most stringent recommendations of the relevant British Standard (BS 8233: 2014), with neighbouring windows partially open. It is confirmed that the AC units will not impact the amenity of neighbours with the addition of the acoustic enclosure, as noted within the expert noise impact assessment prepared by Clement Acoustics.

4.31 If it was considered necessary, the Inspector could impose a condition requiring further details of the acoustic enclosure to be provided and approved within a certain time period. Therefore, the appeal should succeed on ground (f).

Grounds of Appeal (g)

4.32 Section 174(2)(g) says "that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed".

4.33 The period of compliance specified on the notice falls too short of what should be reasonably allowed. One month to ensure compliance would be extremely difficult based on the limited availability of builders within London. This would have to involve quotation, instruction, removal of the air conditioning units and repairs for any associated damage.

4.34 Consequently, the Appellant requests that any compliance period should be a minimum of 6 months, and the appeal should succeed on ground (g).

5. Conclusion

5.1 This appeal against the enforcement notice in relation to grounds (a), (c), (f), and (g) of Section 174(2)(a) of the Town and Country Planning Act has been clearly discussed in this statement.

5.2 The application of Policies CC1 and CC2 of the Camden Local Plan and Policy SI 4 of The London Plan are not considered to be relevant to the development that is the subject of this appeal. They are more appropriately applied to major developments or schemes involving 5 or more dwellings or significant amounts of floorspace increase. They are not appropriately applied to householder applications. An assessment based on the cooling hierarchy is not necessary and is over burdensome.

5.3 Nevertheless, and insofar as they are considered or applied in this case, the proposal illustrates the reduction and mitigation against the impact of dwelling overheating through the application of the cooling hierarchy, resulting in no increase in carbon dioxide emissions, in accordance with policies CC1 (Climate change mitigation) CC2 (Climate change adaptation measures) of the Camden Local Plan 2017.

5.4 The proposed A/C units, by virtue of their modest size, simple design and rear location would continue to preserve the character and appearance of the host building and the wider Holly Lodge Conservation Area. The proposal complies with Policies Policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017 and Policy DH2 of the Highgate Neighbourhood Plan 2018.

5.5 The exceptional circumstance that is the occupier's medical condition should be given moderate weight in assessment of heritage and active cooling. This may be a situation where a personal permission could be appropriate albeit we consider that the proposals are in accordance with the Development Plan.

5.6 Therefore, it is considered that the units have no impact on the appearance of the building as a whole as there are no significant views of the AC units. The appellant has carried out works for the improvement or alteration of the building which do not materially affect the external appearance of the building. The works consequently do not amount to development, as per the meaning noted in Section 55 of the Town and Country Planning Act 1990 part (2) (a)(ii). Therefore, there has been no breach of planning control.

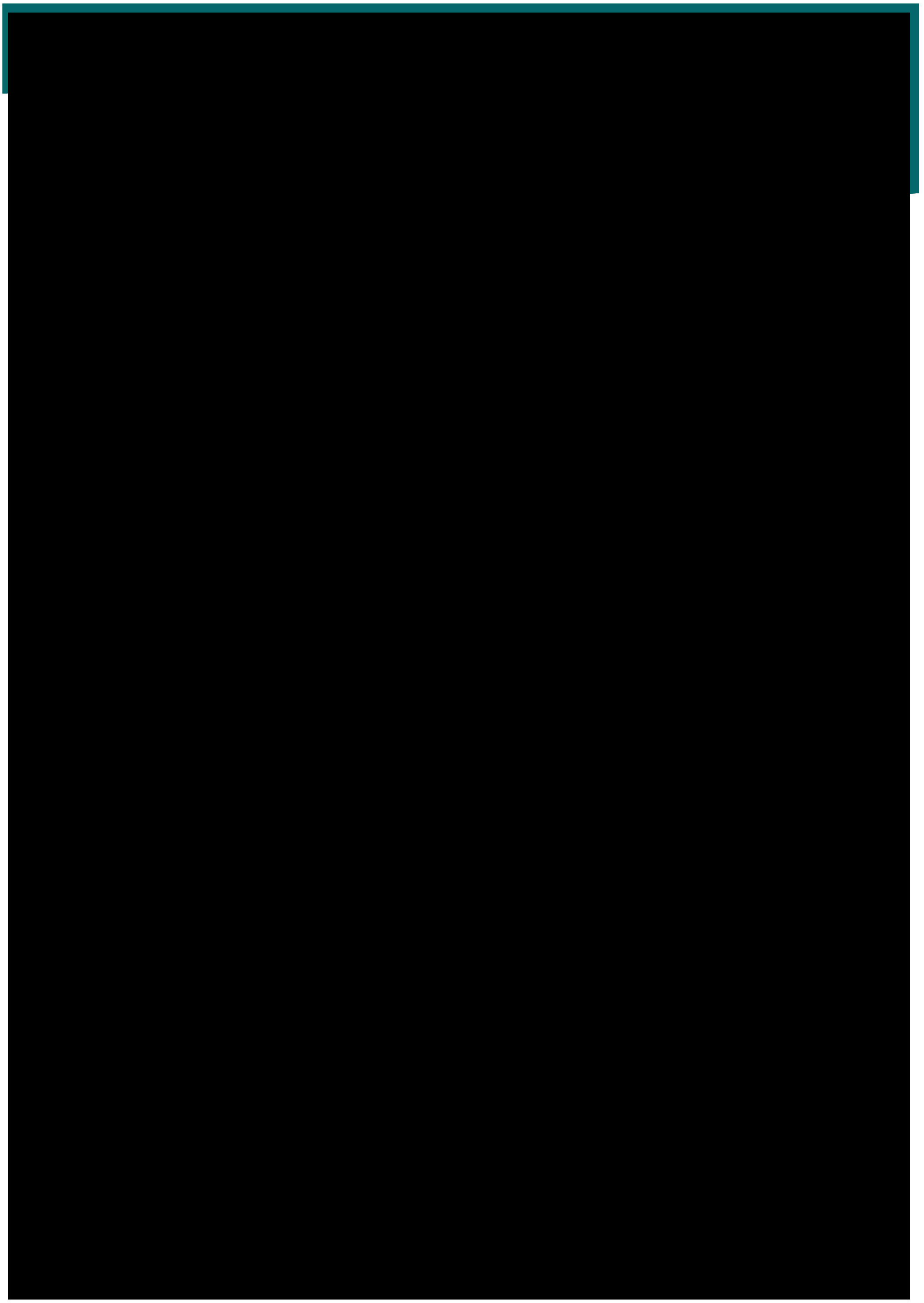
5.7 Based on this enforcement appeal statement and the information submitted as part of the planning application, the appeal should succeed on in relation to grounds (a), (c), (f), and (g).

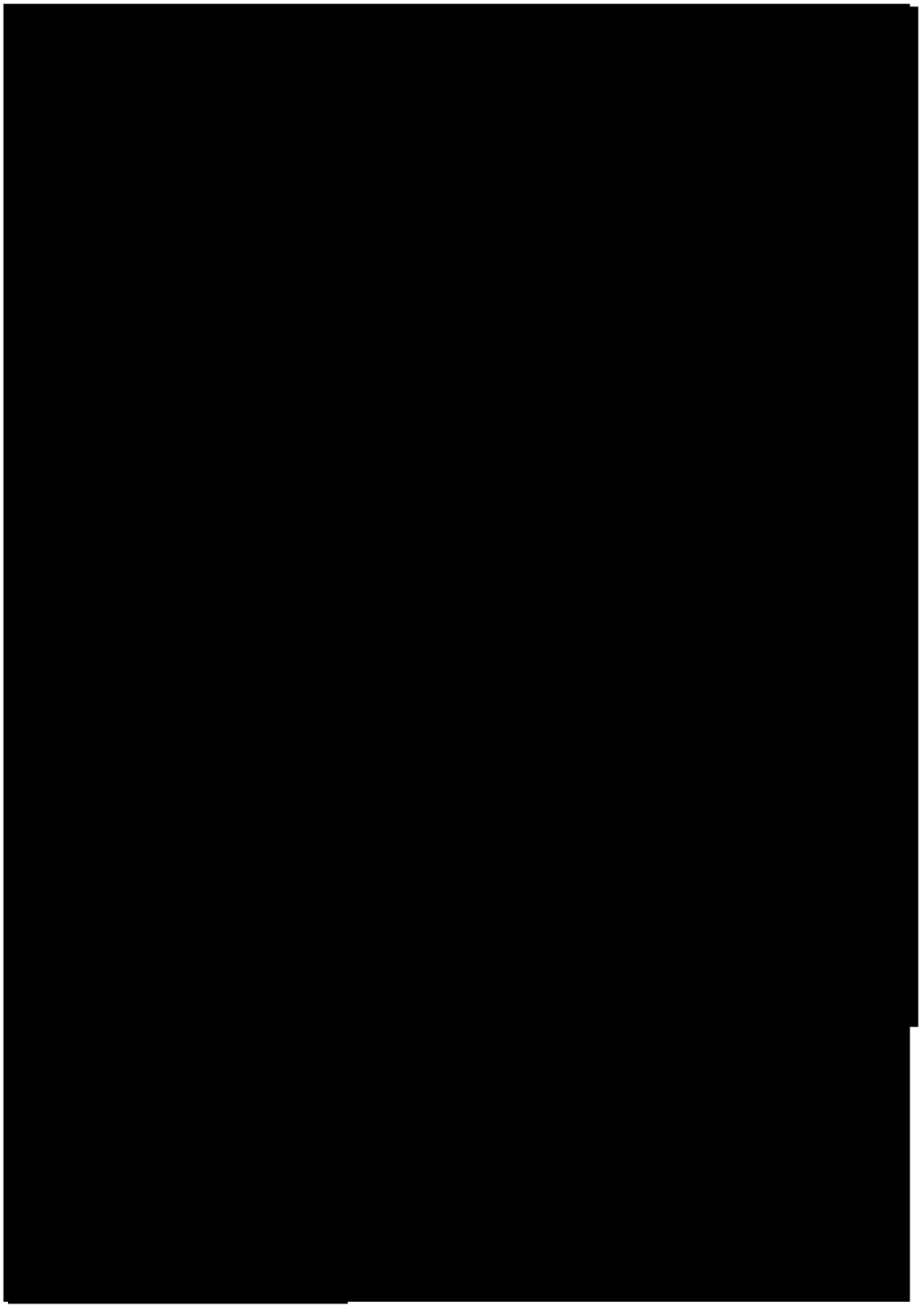
5.8 The Appellant asks the Inspector to quash the enforcement notice for the *'Installation of 3 x air condenser units to the rear roof of the single storey ground floor extension',* as well as subsequently approving the linked planning appeal for *'Installation of 3 x air condenser units with acoustic enclosure to the rear roof of the single storey ground floor extension. Part retrospective.'*

6. Appendix

6.1 This following documents are appended on the pages below:

1. Doctor's [redacted] Clinic Report 05.04.24
2. Doctor's Letter 22.04.24
3. Appeal decision APP/X5210/C/00/1042558, dated 4th October 2000





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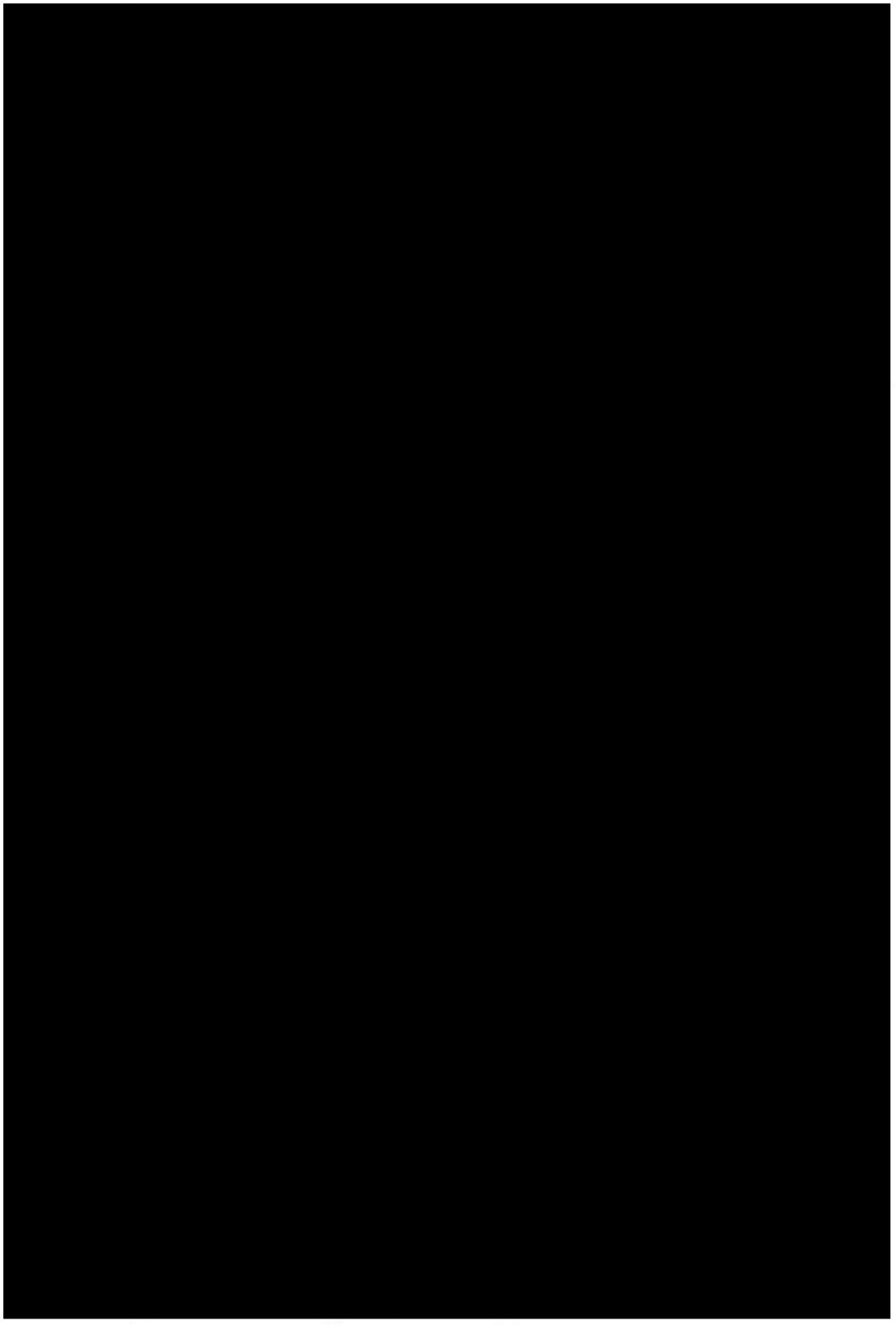

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Appeal Decision

site visit held on 19 September 2000

by Paul V Morris DipTP MRTPI

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
Houlton Street
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4 OCT 2000

Appeal 1: APP/X5210/C/00/1042558

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by Atelier London Ltd against London Borough of Camden Council.
- The site is located at Garden Studios, 11-15 Betterton Street, London WC2.
- The Council's reference is EN000186.
- The notice was issued on 21 March 2000.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of 17 air conditioning units.
- The requirement of the notice is to permanently remove the 17 air conditioning units from the premises and make good the fabric of the building.
- The period for compliance with the requirements is 2 months.
- The appeal was made on grounds (c), (d), (f) and (g) as set out in section 174(2) of the 1990 Act.

Summary decision: enforcement notice quashed

Appeal 2: APP/X5210/A/00/1045145

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is brought by Atelier London Ltd against the London Borough of Camden Council.
- The site is located at Garden Studios, 11-15 Betterton Street, London WC2.
- The application (ref:PS9905142), dated 10 November 1999, was refused on 9 March 2000.
- The development proposed is the retention of 17 air conditioning units installed on the roof and on rear walls as shown on drawing 9808C/101.

Summary decision: appeal not determined

Procedural matter

1. As part of the written representations, an application for an award of costs was made by the appellant against The Council. This application is the subject of a separate letter.

The enforcement appeal – ground (c)

2. The 17 air conditioning units are in 2 separate groups. Units 1-7 (as shown on drawing 9808C/101) are in a line along a roof valley between a side wall of the adjoining building and a large sloping sky light which extends from the valley up to the main flat roof of the appeal premises. There is a further large sloping skylight on the opposite side of the premises and units 8 & 9 and 15-17 are fixed to the vertical flank walls to each side of the well of the skylight and units 10-14 are in a line along the bottom of the skylight. This second group of units is near to the end of the rear landings of the 3 upper floors of the

Betterton House flats. The housings of the units vary in size but it appeared to me that the largest was about 1m x 0.75m x 0.30m.

3. Part of the appellant's evidence in support of this ground was concerned with the time when the units were installed but this is a matter for consideration under ground (d).

4. The appellant pointed out that the units had been installed separately and each installation therefore constituted a separate operation for planning purposes. Whilst this may be the case, to my mind it does not affect the consideration of the appeals.

5. The question was also raised of whether the installation of the units comprised a building or engineering operation. Clearly, engineering work will be carried out to install air conditioning units as it will involve the fixing of the condensers to the building and the fitting of pipes and control units and electrical connections. As the units are fixed to the building, they can also be regarded as additions to the building as referred to in s.55(1A)(c) of the 1990 Act. In either case, the installation, which involves the improvement or other alteration of the building, falls to be considered against the exception set out in s.55(2)(a)(ii) relating to the material effect on the external appearance of the building.

6. The appellant drew attention to the case of Burroughs Day v Bristol CC [1996] 19 E.G.126 and I agree that this judgement does give guidance on the question of 'material effect' which applies to the external appearance and not the exterior of the building. The phrase was taken to imply that the change in appearance must be visible from a number of vantage points; visibility from the air or from a single building would not be sufficient; it had to be judged for its materiality in relation to the building as a whole and not by reference to a part of the building taken in isolation.

7. Units 1-7 cannot be seen from street level; there may be a partial view of the units from a couple of the side windows of a building opposite which backs on to Arne Street but, because of the size and position of the units in the roof valley, the effect on the appearance of the building will be insignificant.

8. As for units 8-17 on the other side of the building, as I mentioned, they are in a well in the side of the building caused by the large sloping skylight. This side of the building is not visible from the street; it can only be seen indirectly from the rear landings of the Betterton House flats. The units will be noticeable to the residents of the nearest flats if they look sideways from the landings but they would not stand out in any view because of the appearance of the skylight, the safety fencing along the bottom edge and the general clutter of windows and pipes on the walls.

9. In my opinion, the units have no impact on the appearance of the building as a whole as there are no significant views of the units in relation to the building. In this case, the appellant has carried out works for the maintenance, improvement or other alteration of the building which do not materially affect the external appearance of the building. The works do not therefore amount to development within the meaning of s.55(2)(a)(ii) of the 1990 Act. There has been no breach of planning control; the appeal on ground (c) succeeds and the enforcement notice will be quashed.

10. In coming to my conclusion, I have noted the comments of the Council and others about the objections of the local residents to the units and, as far as I can tell, these are all concerned with the disturbance caused by the noise of the fans in the air conditioning units. I have

found no reference to any visual harm. I have also taken account of the fact that the building is in the Covent Garden (Seven Dials) Conservation Area but this does not alter my conclusion that there is no material effect on the external appearance of the building.

11. Because of my findings on ground (c), it is not necessary for me to consider grounds (d), (f) and (g) nor to determine the appeal against the refusal of planning permission.

FORMAL DECISION

12. In exercise of the powers transferred to me, I allow the appeal and I direct that the enforcement notice be quashed.

13. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

Inspector

Costs Decision

site visit held on 19 September 2000

by Paul V Morris DipTP MRTPI

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
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- 4 OCT 2000

Appeals: APP/X5210/C/00/1042558 & APP/X5210/A/00/1045145

- The application is made under the Town and Country Planning Act 1990, Sections 174 & 175(7) and the Local Government Act 1972, Section 250(5)
- The application is made for a full award of costs by Atelier London Ltd against the London Borough of Camden Council.
- The site is located at Garden Studios, 11-15 Betterton Street, London WC2.
- The appeals were against an enforcement notice alleging the installation of 17 air conditioning units without planning permission and against a refusal of planning permission for the same development.

Decision: the application is refused

The case for the appellant

1. With reference to Planning Policy Guidance Note 18, paragraphs 14-17, the appellant claimed that the Council had behaved unreasonably by not heeding Government advice that, in dealing with small businesses, negotiations should take place with the company concerned. This was a case where discussions between the appellant and the Local Planning Authority may have resolved the issues in dispute before an enforcement notice was served or restricted the scope of the enforcement notice to a smaller number of the air conditioning units. Evidence had been produced to show that some units were installed more than 4 years ago. Furthermore, the Council had failed to produce evidence that these units had resulted in significant harm.

The Council's response

2. There had been no unreasonable behaviour and the Council had exercised due care. The claims that several of the units were installed more than 4 years ago were supported by an affidavit from an employee of the appellant company but not by documentary evidence. The documentary evidence must have been available to the appellant but none was submitted to the Council. This cannot be seen as an unnecessary expense as proper evidence was needed to demonstrate that the units had been installed over 4 years prior to the service of the Notice.

3. The site is within a designated Conservation Area and the Council considered the impact of the units against the provisions of s.72 of the Planning (Listed Buildings & Conservation Areas) Act 1990.

Inspector's reasoning

4. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of the outcome.

Costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

5. Circular 8/93 Annex 3 paragraph 27 advises that an award of costs may be made against the Council if the planning authority has refused the appellant's request to discuss the matters raised by an enforcement notice and a more helpful approach would have enabled the appeal to be avoided.

6. The application for planning permission for the 17 units was made in November 1999 and refused on 9 March 2000. The enforcement notice was subsequently issued on 21 March 2000. Prior to this, planning permission had been granted by the Council in August 1999 for 4 condenser units and 10 air conditioning units on the roof following an application submitted in February 1999.

7. Apart from the appellant's assertion that there had been no discussions with the Council prior to the issue of the enforcement notice, there was no suggestion that the Council had refused to discuss how to deal with the 17 units. It seems to me that, since February 1999, when the first application was submitted, there was ample time for the parties to discuss any problems concerning the existing air conditioning units. This was particularly the case in the period from November 1999 to March 2000 when the Council was considering the application subject of this appeal. There has also been the period since April 2000 when the appeal against the enforcement notice was made.

8. PPG 18 says that formal enforcement action should not come as a 'bolt from the blue' to a small business. Considering that a planning application had been submitted for the 17 units and that there had obviously been contact between the appellant and the Council over a prolonged period about the 17 units and others, it seems to me that the Council's action could not be described in this way.

9. In the appeal, I did not need to consider ground (d) or the planning appeal so I cannot come to any conclusions on the merits of the evidence about immunity or the harm to amenity.

10. As can be seen from the appeal decision letter, I have determined the appeal on ground (c) on the basis of my assessment, in terms of fact and degree, of the material effect on the external appearance of the building. The appellant made no reference to ground (c) matters in the application for costs and so I have not included any consideration of these matters in my determination of this application.

Conclusions

11. I can find no unreasonable conduct by the Council which might have led to the appellant incurring expense unnecessarily. I conclude that the appellant's application is not justified.

FORMAL DECISION

12. In exercise of the powers transferred to me, I hereby refuse the application by Atelier London Ltd for an award of costs against the London Borough of Camden Council.

Inspector