

Date: **24/04/2024**
Your ref: **3340242 and 3340566**
Our ref: **2023/2242/P and EN22/0801**
Contact: Obote Hope
Direct line: 020 7974 2555
Email: obote.hope@camden.gov.uk

Planning Solutions Team
Regeneration and planning
Culture & environment directorate
London Borough of Camden
Town Hall
Argyle Street
London
WC1H 8EQ

Tel: 020 7974 2555
Fax: 020 7974 1680
planning@camden.gov.uk
www.camden.gov.uk/planning

The Planning Inspectorate
3/B Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Paul Eland,

Appeal by Anthony Bandak.
Site: 40 Hillway, London, N6 6HH.

Two Appeals:

1) Appeal against refusal of planning permission dated 20th December 2023 (2023/2242/P) for:

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

Permission was refused on 2 grounds summarised as follows:

1. Impact of the AC units on the appearance of the host building and conservation area, and;
2. Failed to demonstrate the need for the AC units in view of climate change adaptation measures.

2) Appeal against Enforcement Notice (EN) (ref 22/0801) dated 24/1/24

The EN was Issued on similar grounds.

Reasons for both the planning refusal and the EN are set out in full below.

1.0 Summary

Site and designations

1.1 The application building is a two storey plus loft detached dwelling house located within the Holly Lodge Estate. The building has timber detailing to the front. These details reflect inspiration of the Arts and Crafts and Garden City Movement. The rear of the host building consists of a flat roofed extension and there is also a large side dormer.

1.2 The host building is located within the Holly Lodge Conservation area and is identified as making a positive contribution to the character and appearance of the conservation area. The Holly Lodge Estate is a distinctive planned development in the Garden Suburb tradition, dating to the interwar period (1920's) and located on the south-facing slopes below Highgate Village. There is a

homogeneity to the original design of the buildings which lends a strong sense of place with development over the wider surroundings, mostly characterised by residential use.

1.3 The site is also located within the Highgate Neighbourhood Plan Area and policy DH2 (Development Proposals in Highgate's Conservation Areas) requires new development, including alterations or extensions to existing buildings, to preserve or enhance the character or appearance of Highgate's conservation areas and respect the setting of its listed buildings and other heritage assets. The Neighbourhood plan 2018 also requires new development should preserve or enhance the open, semi-rural or village character where this is a feature of the area.'

1.4 Planning Permission was refused on 20th December 2023 for the following reasons in full as listed below:

1. ***The proposed external condenser units 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, 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.***
2. ***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.***

1.5 The EN dated 24/1/24 was issued for the following reasons in full.

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

1.6 The Council's case is set out in detail in the attached Officer's Delegated Report and it will be relied on as the principal Statement of Case. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of these reports were sent with the questionnaire. In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

2.0 Status of Policies and Guidance

2.1 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted in 2017 as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reason for refusal are:

- D1 – Design
 - D2 – Heritage
 - CC1 (Climate change mitigation)***
 - CC2 (Climate change adaptation measures)***
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NB: The process of updating the local plan has begun. It is not envisaged that there would be any material differences in relation to this appeal.

2.2 The Holly Lodge Estate Conservation Area Appraisal and Management Strategy was adopted in December 2012 and Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area under s.72 of the Listed Buildings and Conservation Areas Act 1990 as amended by the Enterprise and Regulatory Reform Act 2013.

2.3 The Highgate Neighbourhood Plan was adopted in September 2017 which was developed for local communities shared vision for their neighbourhood and shape the development and growth of their local area which enables communities to play a much stronger role in shaping the areas in which they live and work and in supporting new development proposals. The Neighbouring Plan is material consideration which provides a powerful set of tools for local people to plan for the types of development to meet their community's needs and where the ambition of the Neighbourhood is aligned with the strategic needs and priorities of the wider local area. as outlined in paragraph 13 of the revised National Planning Policy Framework.

2.4 The Council also refers to supporting guidance documents. The Camden Planning Guidance (CPG) was adopted following the adoption of the Camden Local Plan in 2017.

2.4 National Planning Policy Framework 2023 (paragraphs 123, 131, 132, 139, 158, 159, 160, 161, 164, 205, 206, 207 and 208)

2.5 With reference to the National Planning Policy Framework 2023, there are no material differences between the Council's policies and the NPPF in relation to this appeal.

3. Comments on grounds of appeal

The appellant's statement is set out in 64 points. The content of these are summarised and addressed under relevant headings.

3.0 Design and conservation

3.1 Points 5.5 – 5.11 in the statement refer to design matters. The appellant claims that the 3 x AC units and its louvered enclosure, do not impact the form or visual appearance of the key elements described above in the CAA, specifically the buildings layout, Arts and Craft frontage detailing, or front garden. These elements continue to be preserved and contribute to the character of the host building and the wider Holly Lodge Conservation Area. The form and materials of the building remain unaffected by the AC units and associated acoustic enclosure.

3.2 Council's response: The Council disagrees with the appellant's characterisation of the site. The site is within the Holly Conservation Area, the special character and appearance of which the Council has a statutory obligation to preserve or enhance. The works have already taken place without permission and it is clear that the proposal does not preserve the character and appearance of the area. Moreover, the proposal would be harmful, to the character of the conservation area given the proposal would be introducing a form and materiality which is at variance with the character and appearance as identified under the Holly Lodge Conservation Area Appraisal and Management Strategy (2012). Whilst there is no reference to Air Condenser Units it is clear from the "Problem, pressure and the capacity for change section" in section 7 of the Conservation Area Statement that significantly smaller paraphernalia's included such items as satellite dishes, antennae and solar collectors, all of which can be unsightly. Whilst in this instance the acoustic enclosure cannot be seen from the public domain, it is visible from private vantage points and limited visibility does not mitigate the cumulative impact on the suburban character of the area, to which the application site contributes positively.

3.3 The condensers are contained within large housing unit and the louvered screening does not reinforce or better reveal the interwar period (1920's) of the residential dwelling nor would the proposal preserve or enhance the otherwise positive contribution the application site makes to

that character. No effort has been made to limit their visibility given the location at first floor level. Rather, the proposal causes harm to the character of the area, through the introduction of forms and materials at odds with the host building's Arts and Craft Character of the wider semi-detached pair and its townscape contribution.

3.4 The LPA disagree with appellant's view that the Air Condenser Units including its housing is inconsequential due to the lack of views from the rear of the dwelling. The proposed louvered enclosure also fails under the Management Strategy because it introduces a feature onto the roof of the dwelling which is not known to have an historical precedent, and furthermore is composed of material (louvered screen) which is not part of the nineteenth century character of the application site or the wider area.

4. Dynamic Thermal Modelling

4.1 The appellant claims that CC1 should be applied to new major development proposals only, in relation to carbon dioxide emission targets and considered policy CC1 as not relevant to the assessment, as the proposal is not for a new building/extension or major development. Policy CC1 states that the Council will require all development to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards. CC1 F states that the Council will expect all developments to optimise resource efficiency. Policy CC2 reaffirms that the Council discourages active cooling, given in most scenarios using active cooling systems increases energy consumption and carbon emissions i contrary to the aims and objectives of policy CC1. Section 8.42 under CC2 states 'active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates there is clear need for it after all of the preferred measures are incorporated in line with the cooling hierarchy'. Section 8.43 states the cooling hierarchy includes:

- minimise internal heat generation through energy efficient design;
- reduce the amount of heat entering a building in summer through orientation, shading, albedo, fenestration, insulation and green roofs and walls;
- Manage the heat within the building through exposed internal thermal mass and high ceilings;
- Passive ventilation;
- Mechanical ventilation; and
- Active cooling.

4.2 Notwithstanding the above, Policy CC2 expects developments to be resilient to climate change and include measures to reduce the impact of urban and dwelling overheating, according to a cooling hierarchy and this policy is not restricted only to major developments. The supporting text to the policy sets out that the Council will discourage the use of air conditioning and excessive mechanical plant as, in addition to increasing the demand for energy, such measures expel heat from a building making the local micro-climate hotter. It states that active cooling such as air conditioning would only be permissible where 'dynamic thermal modelling demonstrates that there is a clear need for it after all other preferred measures have been incorporated.

4.3 It is clear that this assertion by the appellant is without merit. With regard to points 4.1 to 4.6, the LPA disagree with the appellant on all the points raised. The policy CC2 (Adapting to climate change) is intended to apply to all development, although this would obviously include major developments where requirements go further. The LPA had in the past been inconsistent on the level of justification sought for schemes to facilitate comfort cooling in smaller developments. Moreover, Camden has since declared that we Council is in a 'climate emergency' and LPA are now giving greater weight to the Local Plan policy and sustainability matters generally. In addition, the London Plan also elevates these considerations. Every application is now assessed consistently and the Council is challenging applicants to address the requirements of Policy CC2 in all cases – including applications that relate to "improvements" to an existing residential unit. Increasingly, the LPA would only grant applications for air source heat pumps in conjunction with residential use unless they accept a planning condition that these be pre-set to only function for heating and not

provide active cooling. Thus, LPA has been consistent with how applications for active cooling are determined. A link to the declaration is attached here.

4.4 Regards the points raised in paragraphs 4.9 to 4.13 within the appellant's statement. The overheating report does not specify where they are proposing active cooling measures and there is a mismatch between where overheating is expected and where the applicant is proposing the use of active cooling. In addition, it's unclear from the assessment whether all 3 air condenser units are for the extension or if they would be connected to other rooms in the house which are not covered by the heat report. Moreover, the report also failed to justify the need for the 3 x air condenser units in a rational manner and why more passive measures can't be utilised instead. It is considered that, on balance the only justification shows that the carbon dioxide savings are similar for both options, with or without active cooling, and therefore it can be concluded that the use of active cooling does not lead to the increase of carbon emissions.

4.5 CPG Home Improvements reaffirms this approach and states that that air conditioning units are discouraged by the Council, in line with Policy CC2 and guidance in CPG Energy Efficiency and adaptation. If you are concerned that your home overheats in summer beyond comfort levels, you should consider passive cooling measures which do not rely on an energy source like air conditioning. The following measures could be taken to reduce overheating:

- Use shading (blinds, shutters, trees, vegetation), to be carefully designed to take into account the angle of the sun and the optimum daylight and solar gain;
- If you are planning an extension, use smaller windows on the south elevation and larger windows on the north (a balance is needed between solar gains (heat) and daylighting);
- Include high performance glazing e.g. triple glazed windows, specially treated or tinted glass;
- Incorporate green and brown roofs and green walls which help to regulate temperature as well as providing surface water run-off, biodiversity and air quality benefits;
- Porches, atriums, conservatories, lobbies and sheltered courtyards can be thermal buffers, they provide a transition between the cold outside and the warmth inside a building (or similarly the reverse in warmer months).

4.5 Planning conditions must meet 6 tests, otherwise they should not be imposed on a planning permission. These 6 tests are set out within the NPPF and Planning Practice Guidance and require the planning condition to be: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects. The appellant made reference that "Although the use of personal permissions by condition are generally not considered appropriate, this may be a rare situation whereby such a condition could be imposed". It should also be noted that the Appellant's personal circumstance was only introduced after it was discussed with the agent that the planning application would be refused and enforced and this information did not form part of the original application. Furthermore it is not considered that these circumstances justify the harm caused.

5. Additional Grounds

5.1 The additional grounds raised by the appellant statement from paragraph 60-65 are without merit. Climate change alongside increasing affluence, space and comfort needs have resulted in the world facing an unprecedented growth in cooling demand, which has the potential to drive one of the most substantial increases in energy and greenhouse gas emissions in recent history. The World Economic Forum stated that "despite the central role of cooling in climate change and sustainable development, the risks and benefits of sustainable cooling remain a global blind spot". Moreover, "According to the International Energy Agency's (IEA) "Future of Cooling" report, there were 1.6bn air conditioning units in use around the world in 2018. The power needed to keep air conditioners and electric fans running accounts for 20% of global electricity use". (Appendix A)

5.2 Reference was made that the proposal should be considered a "less than substantial harm" and the proposal should be considered as the lower end of that scale. However, Para. 208 of the NPPF states that: where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the

proposal including, where appropriate, securing its optimum viable use, statutory presumption in favour of the preservation of the character and appearance of Conservation Areas and the preservation of Listed Buildings and their settings. Considerable importance and weight should be attached to their preservation. A proposal which would cause harm should only be permitted where there are strong countervailing planning considerations which are sufficiently powerful to outweigh the presumption which would not be the case in this instance given there are no public benefits from the scheme.

6. **Additional grounds of appeal regarding the EN**

6.1 the appeal is made on 4 grounds:

- **Ground (a)** – “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”
- **Ground (c)** – “that those matters (if they occurred) do not constitute a breach of planning control”
- f) **Ground (f)** – “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”
- g) **Ground (g)** – “that any period specified in the notice in accordance with [section 173\(9\)](#) falls short of what should reasonably be allowed”

These are addressed below:

Ground a)

This is addressed fully above regarding refusal of planning permission

Ground c)

- **Ground (c)** – “that those matters (if they occurred) do not constitute a breach of planning control”

6.2 In respect of the Town and Country Planning Act (TCPA), Section 55, para 2, the installation of air conditioning units have a utilitarian and functional appearance. As a matter of fact and degree, these works materially affect the external appearance of the property requiring planning consent.

6.3 A recent appeal decision, referenced APP/X5210/C/23/3314141 (appendix B), concerning the property located at 185-187 Haverstock Hill, London NW3 4QG, reinforces the understanding of air conditioning units being development.

6.6 This case highlights the importance of considering the definition of development under S55, where smaller alterations that can materially affect the appearance and character of a property or its surroundings.

6.7 The appellant argues...

... that the proposal does not constitute a breach of planning control because of the following. 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 improvement or alteration of a house. The proposal is an alteration to a roof that does not breach the limits of an ‘extension’ and therefore is its considered that planning permission is not required.

6.8 The appellant's argument seems to hinge on the interpretation of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. This part of the Order deals with the permitted development rights concerning the improvement or alteration of a house. The appellant is suggesting that because the proposal involves an alteration to a roof that does not exceed the limits of an 'extension', planning permission is not required.

6.9 However, the flaw in this argument lies in the interpretation of what constitutes an 'extension' under the regulations. While the appellant may claim that the proposed alteration does not exceed the limits of an extension, it's essential to carefully examine the definition of an extension as per the relevant regulations.

6.10 An extension, in planning terms, typically refers to any enlargement of a dwelling house. This can include additions, conservatory, or similar structural changes that increase the overall footprint or volume of the property.

6.11 In the case of alterations to a roof, especially if it involves the installation of an air conditioning unit as described, it's not merely a cosmetic change but rather a modification that materially impacts the external appearance and potentially the functionality of the building. Such alterations would not fall within the scope of permitted development rights and do require planning permission regardless of whether they meet the specific criteria for 'extensions'.

6.12 Therefore, the argument that planning permission is not required solely based on the assertion that the alteration doesn't breach the limits of an extension is incorrect.

Ground f)

- **Ground (f)** – “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”

6.13 The requirements set out in the notice do not go beyond what is reasonably required to address the identified harm.

If the appeal is successful underground (a), the inspector respectfully request to ensure suitable conditions are imposed to ensure any impact to neighbouring properties are suitably mitigated.

Ground d)

- **Ground D** - “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”

6.14 While the Appellants argue for an extension of the compliance period to six months, they have not provided substantive evidence to support this request. The assertion that one month is insufficient due to limited builder availability in London is not substantiated. Moreover, the tasks outlined by the Appellants—obtaining quotations, instructing contractors, removing air conditioning units, and addressing any resulting damage—are standard procedures within the construction industry and can reasonably be accomplished within a short period.

6.15 Furthermore, the Appellants have not demonstrated why a six-month period is specifically necessary for the completion of these tasks. Without providing specific details or challenges that would justify such an extended timeline, their request appears speculative and unsupported. It's essential to note that compliance periods are typically set based on the nature and scope of the required works, with due consideration given to practical constraints and industry standards.

6.16 Therefore, in the absence of compelling evidence justifying the need for a six-month compliance period, the original one-month timeframe remains appropriate and reasonable. The Appellants have not met the burden of proof required to warrant an extension, and as such, their request should not be granted.

7. Conclusion

7.1 Based on the information set out above and having taken account of all the additional evidence and arguments made, it is considered that the proposal remains unacceptable for reasons set out within the original decision notice. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns.

7.2 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.

7.3 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, 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.

8. Suggested conditions should the appeal be allowed.

1) The development hereby permitted shall be retained and maintained in accordance with the following approved plans: E001 REVA; E002 REVA; E010 REVA; E011 REVA; E013 REVA; E031 REVA; E032 REVA; E033 REVA; E040 REVA; 002A; 010 REVA; 011 REVA; 013 REVA; 031 REVA; 032 REVA; 033 REVA; 040 REVA; Energy and Overheating Assessment; 3 Way Multi Outdoors; Wired Remote Controller; Fujitsu Design and Technical manual; Clement Acoustics Noise Impact Assessment; Supporting letter from Savills date 1st June 2023.

Reason: For the avoidance of doubt and in the interest of proper planning.

2) The external noise level emitted from plant, machinery/ equipment shall be lower than the lowest 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. The noise assessment shall be carried out where required to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary.

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.

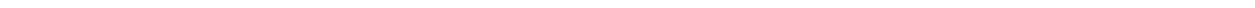
3) *Machinery, plant or equipment at the development shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced within 3 Months of the decision and maintained in perpetuity. Failure to comply will result in the revocation of the planning permission and imposition of the enforcement notice requirements*

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

If any further clarification of the appeal submissions is required please do not hesitate to contact Obote Hope on the above direct dial number or email address.

Yours sincerely

Obote Hope
Planning officer



Appendices

Appendix A - International Energy Agency's (IEA) "Future of Cooling" report

Appendix B - APP/X5210/C/23/3314141- 185-187 Haverstock Hill, London NW3 4QG
