



Appeal Decision

Site visit made on 12 December 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 December 2024

Appeal Ref: APP/X5210/D/24/3351577

3 Collard Place, Camden, London NW1 8DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Steven Bailey of Atelier iad Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref is 2023/4577/P.
 - The development proposed is the installation of 2x AC units .
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The scheme seeks the retention of two air conditioning units (AC units) which are positioned on the flat roof of the rear extension of 3 Collard Place. The information indicates that they have been in place since June 2023. I was able to see the AC units at my site visit and I have considered the scheme on the basis that it is retrospective.

Main Issues

3. The main issues are:
 - the effect of the AC units on the living conditions of adjoining occupants, and
 - whether or not the proposal has justified the need for active cooling, having regard to the approach of the development plan and the cooling hierarchy.

Reasons

4. 3 Collard Place is a three storey, end of terrace dwelling that forms part of a fairly modern residential development within the built-up area of this part of the Borough. No 3 has a flat roofed rear extension with raised rooflight. One AC unit is sited on the flat roof between the rooflight and the rear wall of the house. The other is positioned perpendicular to the rear wall and this AC unit is reasonably close to, but set in from, the boundary with the attached property, 2 Collard Place.
5. Located at an oblique angle, and detached from the appeal dwelling, is 4 Collard Place. This adjoining dwelling has front windows that are angled away from, but reasonably close to, the back of No 3 with its rear flat roof and AC units.

6. The application was accompanied by a Plant Noise Impact Assessment (29 September 2023) (Cass Allen) (the Noise Assessment). This assessed the noise levels of the AC units against the requirements of BS4142:2014+A1:2019 – Methods for rating and assessing industrial and commercial sound, and compared the noise generated against background noise levels. The conclusion of this report is that the plant noise from the AC units are generally below the onset of an adverse impact between 0630 and 2230hrs. The report recommends a restriction of hours for the operation of the AC units and advises that this could be achieved by a planning condition in any approval. It is argued that this would ensure that the AC units would be used only at times when the Noise Assessment and analysis advises there would be generally no adverse effect on the amenities of neighbouring properties.
7. At the application stage an objection was received from the occupants of 2 Collard Place, the closest property to the AC units. This response comments that one of the outdoor AC units is positioned well above the fence level, close to the boundary with their garden and nearest window. It is argued that the unit could be moved to the other side of the roof, particularly as that side is not adjacent to any dwelling.
8. The Planning Report references objections from the Council's Environmental Health Team who comment that the AC units would generate a harmful impact to the attached neighbouring property in terms of noise and vibration. The report does not, however, refer to the Noise Assessment that recommends that the AC units are not used overnight.
9. When examining these matters, I note the readings which have been taken at the property and which are shown in Figure 1 of the Noise Assessment. This graph shows the relationship of the plant noise and the background noise level +5dB (which is explained to be the onset of an adverse impact) during the reasonably small number of sample days.
10. The information shows that there are some short periods during the daytime on one of the sample days when the AC unit noise is similar and/or at times slightly above the background noise level +5dB. This also occurs on another sample day during the mid-evening period. The evidence, therefore, does not entirely support the clear division for the period 0630 to 2230hrs when it is argued no adverse impact would occur. Furthermore, I do not have a clear understanding of how typical the sample days were or how weather conditions may have affected the measurements in terms of the impacts on adjoining properties.
11. The nearest habitable room at No 2 may be a living room, with a bedroom on the second floor, but the information indicates that at times, even outside the 2230 to 0630 period, an adverse impact could result. I am, therefore, not satisfied or reassured that a planning condition, restricting the hours as suggested, would be effective in preventing an adverse impact by way of noise to the living conditions of the occupants at No 2 on all occasions. I also have very little commentary as to how the AC units may affect the living conditions of the occupants of No 4, where it is assumed there is a bedroom at first floor in the front of that property.
12. The appellant's appeal statement indicates that an acoustic enclosure could be used to reduce the noise levels of the AC units by 12dBa(A). However, I have little specific details of such an enclosure and it does not form part of the

drawings or detailed specifications. Furthermore, I do not know the size and the potential visual impact of such an addition. I note that the adjoining occupant highlights that one of the AC units is currently positioned above the fence level and this neighbour has not had the opportunity to comment on any implications of an enclosure were it to form part of the scheme.

13. To allow the proposal to evolve at the appeal stage and include acoustic enclosures, without a clear understanding of the impact of those enclosures, or even whether they would achieve the required reduction in noise levels in this specific case, would not be reasonable or fair. Consequently, I do not consider that enclosures to the AC units should be made the subject of a planning condition in any approval.
14. I also note the planning conditions suggested by the Council which it considered, without prejudice, could form part of any approval. The first condition seeks a revised noise assessment prior to the installation works and requires the installation to take place in accordance with the approved details. However, the AC units are already in place so such a condition does not seem a practical or reasonable approach.
15. The second suggested condition from the Council requires that the external noise level emitted from the equipment shall be lower than the typical existing background noise level by at least 10dBa. It appears that the present AC units would not meet this noise level requirement on occasions and, therefore, there would be an immediate issue to resolve. In these circumstances, this suggested condition does not seem to provide a reasonable way forward to address the noise issue. Consequently, I am not satisfied that these or other conditions, with a revised or different wording, would be reasonable to address the issues that I have identified.
16. It follows, based on the above analysis, that the AC units create, or at least have the potential to create, at times, an unacceptable adverse impact by way of noise on the living conditions of the occupants of the adjoining property. Conditions attached to any approval could not be used to address this harm. Consequently, the scheme conflicts with Policies A1 and A4 of the London Borough of Camden Local Plan 2017 (the Local Plan) which explains, amongst other things, that planning permission will not be granted for development likely to generate unacceptable noise and vibration impacts.

Whether or not the proposal has justified the need for active cooling

17. Policy CC2 of the Local Plan sets out the approach for adapting to climate change. The policy advises that all development should take appropriate measures to reduce the impact of urban and dwelling overheating, including the application of the cooling hierarchy. The supporting text explains that all new development will be expected to submit a statement demonstrating how the London Plan's cooling hierarchy has informed the building design.
18. The text also explains that any development that is likely to be at risk of overheating will be required to complete dynamic thermal modelling to demonstrate that any risk of overheating has been mitigated and that active cooling will not be permitted without such modelling. However, I agree with the appellant that this requirement appears to refer to proposed buildings and to ensure that such new buildings are designed and modelled to mitigate the effects of possible overheating.

19. Furthermore, to support this view, the cooling hierarchy seeks, for instance, to reduce heat entering the building through orientation, and manage the heat within the building through exposed internal thermal mass and high ceilings. These are all matters regarding the initial design of the building and in the case of this dwelling, which was constructed some years ago, such adaptations are not feasible.
20. The appellant has set out in the appeal statement the approaches that have been examined, in line with the cooling hierarchy. It is explained why matters such as passive ventilation have been tried but proved to be ineffective, and that mechanical ventilation, while useful for air circulation, would not address the core issue of overheating of the air itself, especially during hot weather influenced by the urban heat island effect in central London.
21. The evidence shows that the rear bedroom, which faces broadly south, can have internal temperatures that rise to levels that are unreasonable. It appears that the position of the rear of No 3, with the nearby flank wall of No 4 and the surrounding buildings, as well as the high brick wall behind the attached houses in this terrace, means that outside air probably does not circulate well at times and can heat up in the sun. This lack of circulation and related outside temperatures reduces the ability for passive and/or mechanical air movements within the building to help reduce the internal temperatures.
22. I am satisfied that the appellant's statement sets out the options that have been investigated and trialled in accordance with the cooling hierarchy. In the circumstances of this dwelling, and its orientation and relationship to adjoining structures, I consider that the cooling hierarchy has been examined with sufficient and proportionate analysis. Consequently, the case has been made that active cooling would be justified to seek to tackle the overheating situation in this building. In coming to this judgement, I have also had regard to the requirements and advice set out in the Camden Planning Guidance - Energy Efficiency and Adaptation (January 2021), especially the section on overheating in buildings.
23. In the light of the above analysis, I conclude that the proposal has justified the need for active cooling having regard to the approach of the development plan and the cooling hierarchy. Consequently, the scheme does not conflict with Policies CC1 and CC2 of the Local Plan which set out, amongst other things, the planning approach to adapting to climate change.

Conclusion

24. The case has been justified for a system of active cooling and this would, and I assume does, address the overheating issue in the particular circumstances of this building. This would provide suitable conditions for the occupation of the dwelling by the present residents, including some occupants of young age. This is a matter that weighs in favour of approval.
25. However, on the other hand, the AC units create, or at least have the potential to create, at times, an unacceptable adverse impact by way of noise on the living conditions of the occupants of the adjoining property. This harm cannot be overcome by planning conditions and is a significant matter that weighs heavily against the scheme.

26. It is such that this harm and related policy conflicts are at a level that the scheme does not comply with the development plan when considered as a whole. This harm is of such significance that it is not outweighed by the benefits. The development should be determined in accordance with the development plan and, accordingly, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR