

Delegated Report (Refusal)		Analysis sheet		Expiry Date: 31/01/2022	
		N/A / attached		Consultation Expiry Date: 09/04/2022	
Officer			Application Number(s)		
Sam FitzPatrick			2021/5967/P		
Application Address			Drawing Numbers		
12 St Ann's Gardens London NW5 4ER			Please refer to decision notice.		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Installation of 2 x heating/cooling units to the rear elevation at second floor level (retrospective).					
Recommendation(s):		Refuse planning permission that the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended, regarding the installation of 2 x heating/cooling units to the rear elevation at second floor level (retrospective), and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.			
Application Type:		Householder Application			
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice			
Informatives:					
Consultations					
Adjoining Occupiers:		No. of responses	00	No. of objections	00
Summary of consultation responses:		Site notices were displayed from 16/03/2022 to 09/04/2022. No objections or responses were received during statutory consultation or prior to the decision being made.			

Site Description

The application site is a three-storey plus mansard level, mid-terrace townhouse. It is located on the north side of St Ann's Gardens, which is a short, dead-ended road branching off from Queen's Crescent. The property is not within a conservation area, not within a neighbourhood area, and not in close proximity to any listed buildings, nor is it listed itself.

Relevant History

Application site

2012/3362/P – Erection of a single storey rear extension at ground floor level and alterations to existing mansard roof at front elevation of dwelling (Class C3). **Planning permission granted 29/08/2012.**

PEX0200974 – Mansard roof extension to dwellinghouse. **Planning permission granted 07/01/2003.**

PEX0200628 – Certificate of Lawfulness for proposed single storey rear extension at ground floor level to a single-family dwelling. **Certificate of lawfulness granted 27/08/2002.**

Other sites

40 Hillway

2022/5452/P – Installation of 3 air-conditioning units and associated acoustic enclosure on roof of rear extension (part retrospective). **Planning permission refused and warning of enforcement action to be taken given 02/05/2023.**

Reasons for refusal:

- 1) The proposal has failed to justify the need for active cooling in order to reduce and mitigate the impact of dwelling overheating and thereby fails to demonstrate that carbon dioxide emissions will be minimised, contrary to policies CC1 (Climate Change Mitigation) and CC2 (Adapting to climate change) of the London Borough of Camden Local Plan 2017.

21 Cressy Road

2022/3532/P – Installation of two external air-conditioning condenser units and erection of a replacement purpose-built acoustic enclosure around them. (Retrospective). **Planning permission refused and warning of enforcement action to be taken given 14/11/2022.**

Reasons for refusal:

- 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) and CC2 (Climate change adaptation measures) of the London Borough of Camden Local Plan 2017.

Relevant policies

National Planning Policy Framework 2023

The London Plan 2021

Camden Local Plan 2017

- **A1** Managing the impact of development
- **A4 Noise and Vibration**
- **D1** Design
- **CC1** Climate change mitigation
- **CC2** Adapting to climate change

Camden Planning Guidance

- CPG Amenity (Jan 2021)
- CPG Design (Jan 2021)
- CPG Energy efficiency and adaptation (Jan 2021)
- CPG Home improvements (Jan 2021)

Draft Camden Local Plan

The Council has published a new Draft Camden Local Plan (incorporating Site Allocations) for

consultation (DCLP). The DCLP is a material consideration and can be taken into account in the determination of planning applications, but has limited weight at this stage. The weight that can be given to it will increase as it progresses towards adoption (anticipated 2026).

Assessment

1. Proposal

- 1.1. The application seeks retrospective permission for the installation of two condenser units that have been installed to the rear of the property. The units are positioned above the flat roof of the first floor rear extension and are to be used for the purposes of heating and cooling. The units are not currently covered or enclosed by any screening, though the applicant has provided possible options as suggestions.

2. Assessment

- 2.1. The principal considerations material to the determination of this application are as follows:
- Design
 - Amenity
 - Energy and sustainability

3. Design

- 3.1. Local Plan Policy D1 (Design) states that the Council will aim to achieve the highest standard of design in all developments and requires development to be of the highest architectural and urban design quality, which improves the function, appearance, and character of the area. Camden's design policies are supported by CPG 'Design' and CPG 'Home Improvements'.
- 3.2. The proposal involves the installation of two condenser units, fixed one above the other, to the rear elevation of the building, just above the flat roof of the first floor extension. According to the submitted drawings, the total height of the two units is approximately 1.3m above the flat roof, meaning they sit just below the highest rear window of the building.
- 3.3. The application does not involve any acoustic screening or enclosure to the two units, however the applicant has provided indicative examples of covers and enclosures that could be installed to the units. These vary in materiality and design, and there is no indicated preference or choice given out of the twelve examples.
- 3.4. Whilst plant equipment to the rear of the property in this location may be acceptable in principle, this would only be on the basis that an enclosure around the units to help screen them is sensitively designed and subordinate to the host dwelling, in line with Camden's Planning Guidance. However, in the absence of any such screening enclosure, the units appear as out of character and non-domestic additions to the residential nature of the building, and are therefore unacceptable additions. They appear as visual clutter and are detrimental to the setting of rear elevations in the vicinity.
- 3.5. Whilst it is appreciated that examples of potential enclosures have been provided, the Council cannot assess these all given that no one enclosure is proposed or shown in the proposed plans. The application must be assessed as currently indicated, and therefore the proposal does not include any acoustic screening or enclosure. As such, the lack of an appropriate enclosure would mean that the proposed equipment would be an inappropriate and uncharacteristic addition to the host building that would fail to comply

with Policy D1 of the Local Plan.

4. Amenity

- 4.1. Policy A1 (Managing the impact of development) seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. It seeks to ensure that development protects the quality of life of occupiers and neighbours by only granting permission for development that would not harm the amenity of neighbouring residents. This includes privacy, outlook, light availability, and noise. Policy A4 (Noise and vibration) aims to ensure that noise and vibration is controlled and managed, making clear that the Council will resist development that is likely to generate unacceptable noise and vibration impacts. The Council's guidance contained within 'CPG Amenity' provides specific guidance with regards to these aspects.
- 4.2. Due to the nature of the proposed work, there would not be any significant impact with regards to loss of outlook, daylight, or privacy. The principal consideration in terms of amenity would be any noise disturbance that may arise from the use of the condenser units. The application has addressed this by providing a noise impact assessment, which assesses the impact of the plant installation to neighbouring properties.
- 4.3. The submitted acoustic assessment assesses the noise impact of the two Daikin RXM25R5V1B9 condenser units, specifically in relation to the impact on nearby residential properties. Appropriate noise guidelines have been followed within the report, such as Noise Policy Statement for England, National Planning Policy Framework, Planning Practice Guidance on Noise, BS 8233 Guidance on sound insulation and noise reduction for buildings, Camden's Local Plan, and BS 4142:2014 "Methods for rating and assessing industrial and commercial sound".
- 4.4. Based on the results of the submitted noise assessment, plant noise criteria have been adequately predicted, taking into consideration distance losses, surface acoustic reflections, and, where applicable, screening provided by the building. The assessment indicates that the proposed plant installation should be capable of achieving the proposed environmental noise criteria at the nearest and potentially most affected noise sensitive receptor – though only with an acoustic enclosure. The report does specifically state that *"it has been demonstrated that compliance with the established criterion is feasible, dependent on the following material considerations... mitigation is applied as recommended in this report, in the form of a louvred enclosure for the condenser units"*.
- 4.5. As noted in the previous section, no acoustic screening or enclosure has been proposed as part of this application, though the applicant has indicated a willingness to provide one in their cover letter, once the breach of planning permission is resolved. However, the presence (or absence) of an acoustic enclosure does factor into the planning assessment; if no acoustic mitigation is provided, then the proposed condenser units cannot be guaranteed to achieve acceptable impacts on the amenity of neighbours with regards to noise disturbance.
- 4.6. As such, the proposal fails to ensure that the proposed plant installation is capable of achieving the proposed environmental noise criteria at the nearest and potentially most affected noise sensitive receptors, and would fail to comply with Policy A1 of the Local Plan.

5. Energy and sustainability

- 5.1. Because the application includes active cooling, as per Policy CC2 (Adapting to climate change) of the Local Plan and CPG 'Energy efficiency and adaptation', schemes are required to demonstrate that other adequate measures have been considered and modelled before active cooling. In accordance with Policy CC2, the Council strongly discourages active cooling, as active cooling systems increase energy consumption and carbon emissions, contrary to the aims and objectives of Policy CC1 (Climate change

mitigation). As a result, air conditioning units are only permitted where thermal modelling demonstrates that there is a clear need for it after all preferred measures are incorporated in line with the London Plan cooling hierarchy. This means passive measures should be considered first and the building needs to be shown to be at risk of overheating. If active cooling is unavoidable, applicants need to identify the cooling requirement and provide details of the efficiency of the system.

5.2. The CPG document 'Home improvements' does also suggest passive cooling measures which do not rely on an energy source that should be considered first, including shading (through blinds, shutters, trees, vegetation, etc), high performance glazing, specially treated or tinted glass, and green and brown roofs.

5.3. In this instance, the applicant has not provided a dynamic thermal modelling assessment, so it has not been demonstrated that the property is at risk of overheating or that there is a requirement for cooling. The applicant has also not demonstrated that alternative measures within the cooling hierarchy have been considered and incorporated before resorting to active cooling. In the absence of this information, officers are not satisfied that the proposed development has taken measures to minimise risks connected with climate change, and as such the development fails to comply with Policy CC2 of the Local Plan.

5.4. It is noted that the applicant has asserted that passive measures such as ventilation cannot be utilised due to pollution impacts, and that the units are required as a result of poor air quality and resultant health impacts. Officers have inquired as to whether alternative measures that would achieve improved internal air quality but avoid the negative impacts of active cooling have been considered, such as mechanical ventilation or air filtration systems. However, no response was received to this, and the applicant has not demonstrated through clear evidence that the cooling units would be required for health reasons, such as through a GP's note. As such, the Council cannot accept that there would be extenuating circumstances justifying the installation of cooling equipment.

5.5. On the basis of the issues raised above, it is considered that the application fails to comply with Policies CC1 and CC2 of the Local Plan.

6. Recommendation

6.1. Refuse planning permission for the following reasons:

1) The condenser units, by virtue of their scale, design, location, and prominence, constitute harmful and uncharacteristic additions to the host building and surrounding area, contrary to Policy D1 (Design) of the London Borough of Camden Local Plan 2017.

2) The condenser units, in the absence of a suitable acoustic enclosure, would likely be detrimental to neighbouring amenity in terms of noise nuisance, contrary to Policies A1 (Managing the impact of development) and A4 (Noise and Vibration) of the London Borough of Camden Local Plan 2017.

3) The development has failed to justify the need for active cooling by reducing and mitigation 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) and CC2 (Adapting to climate change) of the London Borough of Camden Local Plan 2017.

6.2. Issue an enforcement notice:

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended, regarding the installation of 2 x heating/cooling units to the rear elevation at second floor level

(retrospective), and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

The installation of two condenser units to the rear elevation of the property, located above the roof of the first floor extension.

What you are required to do:

- i) Completely remove the unauthorised condenser units.
- ii) Make good any resulting damages and return the site to its previous state.

Period of compliance: Three months

Reasons why the Council considers it expedient to issue the notice:

- 1) The condenser units have been in place for less than 10 years.
- 2) The condenser units, by virtue of their scale, design, location, and prominence constitute harmful and uncharacteristic additions to the host building and surrounding area, contrary to Policy D1 (Design) of the London Borough of Camden Local Plan 2017.
- 3) The condenser units, in the absence of a suitable acoustic enclosure, have the potential to result in detrimental noise nuisance to neighbouring amenity, contrary to Policies A1 (Managing the impact of development) and A4 (Noise and Vibration) of the London Borough of Camden Local Plan 2017.
- 4) In absence of justification for the need for active cooling by reducing and mitigation the impact of dwelling overheating through the application of the cooling hierarchy, the development fails to minimise carbon dioxide emissions, contrary to Policies CC1 (Climate change mitigation) and CC2 (Adapting to climate change) of the London Borough of Camden Local Plan 2017.