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TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

SECTION 78 & 174

PLANNING & ENFORCEMENT APPEAL

WRITTEN REPRESENTATIONS

Concerning appeals by Ashley Donoff against the refusal of planning permission by the London Borough of Camden for the retention of 3 x AC Units and the issue of an Enforcement Notice requiring removal of 3 x AC units at 9 Briary Close, London, NW3 3JZ

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Appeal site & surroundings

- 1.1 The appeal site is a four storey terraced dwelling located on the southern side of Briary Close in Swiss Cottage, London. The roof of the property is flat and contains solar panels, an air source heat pump and three air conditioning units which are the subject of these appeals.
- 1.2 The site itself is not subject to any specific planning constraints in the London Borough of Camden adopted policies map. The immediately surrounding area is predominantly residential in character with similarly designed three storey terraced dwellings and a large block of residential flats. An aerial photograph of the site and surrounding area is shown in Appendix 1.

Appeal Site History

- 2.1 2024/3724/P - Retrospective application for 3 x AC Units on the roof. Refused 5th December 2024. A copy of the accompanying officers report is shown at Appendix 2.
- 2.2 2022/2231/P- Installation of Solar PV panels on the roof of dwellinghouse. Granted 11th July 2022.
- 2.3 2022/0830/P- Installation of new Air Source Heat Pump (ASHP) for heating on the roof of dwellinghouse. Granted 10th May 2022.
- 2.4 2021/4062/P - New single storey rear extension with green roof and replacement of garage door with window to front elevation.” Granted 26th January 2022.
- 2.5 2021/3827/PE - Erection of an additional storey to dwellinghouse. Granted Prior Approval 13th September 2021.
- 2.6 2020/5246/P - Erection of an additional storey (2.9m in height) on the roof of the existing dwellinghouse” Granted Prior Approval 20th November 2020.

Grounds of Appeal

- 3.1 As the Local Planning Authority (LPA) has refused planning permission and issued an Enforcement Notice relating to the same development, namely the siting of 3 air conditioning units on the roof of the appeal site, appeals against both the planning refusal and the Enforcement Notice (grounds (a) & (g)) have been made and this statement will address both appeals as they both relate to the same development.

3.2 The Local Planning Authority has cited one main reason for refusing the original planning application:-

The proposal has failed to provide sufficient demonstration that all feasible passive and other design measures to reduce overheating (cooling hierarchy) have been incorporated in the property before consideration of air conditioning, contrary to policies CC1 (Climate change mitigation) CC2 (Climate change adaptation measures) of the Camden Local Plan 2017.

3.3 The Local Planning Authority has raised no further concerns with the proposed development and as such is acceptable in all other respects. Therefore, the only issue to consider as part of this appeal, given the reasons for refusal, is whether the appellant can sufficiently demonstrate that all passive and other design measures to reduce overheating have been incorporated in the property before consideration of air conditioning.

3.4 Following the refusal of planning application 2024/3724/P, the Local Planning Authority issued an Enforcement Notice on 12th December 2024 requiring the removal of the three air conditioning units. The reasons for issuing the Enforcement Notice were:-

In the absence of sufficient information to show all feasible passive and other design measures to reduce overheating (cooling hierarchy) were incorporated in the property before consideration of air conditioning, the development would not comprise sustainable infrastructure, minimise the efforts of climate change and limit carbon dioxide emissions contrary to policies CC1 (climate change mitigation), CC2 (Climate change adaptation measures), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the Camden Local Plan (2017).

3.5 It is noted that the reason for issuing the Enforcement Notice expands on the reasoning given by the LPA in refusing the planning application and the inclusion of this additional policy reasoning will be addressed in the relevant section below.

3.6 As a starting point for these appeals it should be noted that the appellant, since purchasing the appeal site, has undertaken extensive refurbishment works to the property to make it as energy efficient as possible. The Energy Performance Certificate (EPC) issued for the building following the refurbishment works shows that it has a very high B rating and as far as the appellant is aware this is the most energy efficient house on the surrounding estate. A copy of this EPC is shown as Appendix 3.

3.7 As can be seen from the planning history set out above, the appellant has been granted planning permission for and has now installed solar panels and an air source heat pump on the roof of the appeal site along with the air conditioning

units. As a consequence of these works, as shown within the Overheating Risk & Energy Assessment (Rev2) submitted with the planning application (see page 12), the energy use of the property has been reduced by 75% and as a consequence there has been an 81% reduction in CO2 emissions. It is against this baseline that the acceptability of the appeal proposal should be considered given the aims of the planning policies cited by the LPA.

- 3.8 Policy CC1 of the Local Plan sets out that the Council will require all development to minimise the effects of climate change. Policy CC2 states that the Council will require development to be resilient to climate change. This policy goes on to set out that all development should adopt appropriate climate change adaptation measures which include, d) measures to reduce the impact of urban and dwelling overheating, including application of the cooling hierarchy.
- 3.9 The cooling hierarchy as set out within the accompanying wording of Policy CC2 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;
- 3.10 The accompanying wording of Policy CC2 also clearly states that active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates there is a clear need for it after all of the preferred measures are incorporated in line with the cooling hierarchy.
- 3.11 To satisfy the requirements of the above mentioned policies, the appellant submitted an Overheating Risk & Energy Assessment. This report concluded that:- *'overheating is expected within the building even following extensive refurbishment. When considering the cooling hierarchy of the Camden Local Plan much of the recommendations to mitigate the need for mechanical cooling have been introduced, however overheating is still expected and therefore it is believed that retrospective planning permission for comfort cooling should not be withheld. The report demonstrates that the inclusion of comfort cooling does not adversely affect energy use or therefore CO2 emissions. The extensive refurbishment and extensions have vastly reduced the energy consumption as a whole and further adding weight for the inclusion of comfort cooling being permitted.'*

- 3.12 As set out within the officer's report at Appendix 2, the Council's Sustainability Officer reviewed this application and was of the view that the appellant had not provided sufficient demonstration that all feasible passive and other design measures to reduce overheating (cooling hierarchy) have been incorporated in the overheating assessment/property before consideration of air conditioning.
- 3.13 A revised report dated 28th October 2024 was submitted to the Council, however the officer still questioned why ceiling fans were not incorporated and why Mechanical Ventilation with Heat Recovery (MVHR) with air tempering was not considered. In response to the comments within the officer's report and the subsequent reason for refusal and issue of the Enforcement Notice, L2 Energy Consulting have provided a response which addresses these issues raised by the Council. A copy of this response dated 19th December 2024 is shown at Appendix 4.
- 3.14 Within the response provided by L2 Energy Consulting it should be noted that Camden's adopted Energy efficiency and adaptation, Supplementary Planning Document (SPD) (January 2021) is referenced which sets out the cooling hierarchy in detail. This SPD, despite being relevant to the determination of the planning application is not referenced within the LPA's reason for refusal or in the reasons for issuing the Enforcement Notice. A copy of this SPD is shown at Appendix 5.
- 3.15 The SPD, as set out within the document itself, supports Local Plan Policies CC1 Climate change mitigation and CC2 Adapting to climate change and within chapter 10 of this document the cooling hierarchy is set out. The response from L2 Energy Consulting comments on each of the points within cooling hierarchy and also comments upon the absence of ceiling fans and 'tempered' MVHR, raised by the LPA, neither of which are included within the cooling hierarchy as set out within the SPD.
- 3.16 The response states the following:-

In respect of the Officer Report 2024.3724.P much emphasis is given to two technologies not considered in the refurbishment.

1. Ceiling fans

As the ceilings are lower than average in places, ceiling fans would be dangerous, they are simply not practical in children's bedrooms, furthermore, the building has been installed with MVHR to control air changes which includes a pollen filter which is very important to the occupier, ceiling fans whilst dangerous, they would also conflict with the purpose of the MVHR system installed and would suggest the two would never be installed together.

2. 'Tempered' MVHR

This technology is not widely used within residential property and most people would not know this technology is available for consideration.

Given that so much emphasis has been given to the above technologies within the Officer Report 2021.3724.P you would think they would both be included on the 'Cooling Hierarchy' within Camden Planning Guidance, unfortunately they are not, and were therefore never likely to investigate their use as an alternative.

3.17 With regards to the points raised by L2 Energy Consulting about ceiling fans conflicting with the purpose of the MVHR system and the pollen filters within the MVHR system, the appellant suffers from [REDACTED] for which he takes daily prescription medication to help reduce his [REDACTED] symptoms from around February to September. The pollen filters within the MVHR along with daily medication have greatly improved the health and well-being of the appellant. However, for the pollen filters within the MVHR to function effectively, the windows in the property need to be kept closed resulting in considerable overheating and therefore air conditioning is required. A copy of the appellants prescription for [REDACTED] is shown in Appendix 6.

3.18 The response from L2 Energy Consulting concludes, given the additional detail provided by them following a review of the reason for refusing the planning application and officer's report that:-

'The owners of 9 Briary Close have created a hugely energy efficient building from an otherwise inefficient 1970s property and included PV to further offset the energy used, going above and beyond current regulations and GLA current energy use guidance. The expense and disruption of having to remove the installed air conditioning feels extremely harsh given the circumstances and because of the points stated we believe the decision for refusal to be unreasonable and strongly believe this should be overturned on appeal.'

3.19 Taking all of the information provided by L2 Energy Consulting within their original assessments and subsequent response provided with this appeal, it is clear that all feasible passive and other design measures to reduce overheating have been incorporated at the appeal site, however overheating is still expected and as such the retention of the 3 air conditioning units is fully justified and accordingly the requirements of both Policy CC1 and CC2 of the Local Plan have been satisfied.

Additional policy reasons cited on the Enforcement Notice

- 3.20 The reasons for issuing the Enforcement Notice are the same as those cited for the refusal of the planning application, however the Enforcement Notice also cites local plan policies A1 (Managing the impact of development) and DM1 (Delivery and monitoring).
- 3.21 Policy A1 sets out that the Council will seek to protect the quality of life of occupiers and neighbours and that planning permission will be granted for development unless this causes unacceptable harm to amenity. This policy lists a number of factors which will be considered, however none of these factors have been identified by the Council in their officer's report shown at Appendix 2 as being an issue.
- 3.22 In terms of possible noise disturbance to neighbouring properties from the air conditioning units, an acoustic report was submitted and reviewed by the Council's Environmental Health Officer, and it was concluded by them that there would be no adverse impact on neighbouring residents in terms of noise and vibration. It was stated that compliance conditions would have been placed on the application in the event of any approval to limit noise and vibration and the appellant is happy to accept any such conditions so long as they meet the 6 tests set out within the NPPG.
- 3.23 In addition the officer concluded that because of the scale and siting on the units, there would be no adverse impacts relating to outlook, daylight or sunlight. Therefore it is not at all clear why Policy A1 was cited on the reasons for issuing the Enforcement Notice when the Council planning officer had already concluded that there was no conflict with this policy. In fact it should be noted that four letters of support from neighbouring properties were received during the consultation process further confirming that no impact on residential amenities is caused by the air conditioning units.
- 3.24 Policy DM1 sets out how the Council will deliver the vision, objectives and policies of the Local Plan. It is not at all clear how the development enforced against is contrary to this policy. Indeed the officer's report for the planning refusal does not mention this policy at all and as such it is not considered relevant to the determination of the enforcement appeal.

Ground (g)

- 3.25 In the event of the ground (a) appeal failing, the appellant is of the view that one month is an inadequate amount of time to comply for the following reasons. The works to remove 3 air conditioning units cannot be done by the appellant himself. The removal works, due to the refrigerant involved, means that only a licensed HVAC technician can remove the units. Due to the height of the

dwelling which has four storeys, specialist equipment may be required to access the roof area before the works to remove the units can begin.

- 3.26 In the appellant's view, to secure the services of an appropriately licenced technician who will need to have the equipment needed to access the roof may take more than a single month. The penalties for failing to comply with an Enforcement Notice within the period specified means that a criminal offence will have been committed. It is submitted that a period of three months would give the appellant adequate time to secure the services of a licenced technician to remove the units following which the making good of the roof can take place as is required by the Enforcement Notice.

Conclusions

- 4.1 It is clear that the appellant has striven to provide an energy efficient dwelling for himself and his family. As set out above it is the appellant's case for both the S78 and ground (a) S174 appeal that it has been adequately shown that all feasible passive and other design measures to reduce overheating, as set out within the cooling hierarchy stated in the relevant local plan policies and SPD, have been incorporated into the appeal site following which there is still overheating and as such the requirement for air conditioning is fully justified.
- 4.2 The Inspector is therefore respectfully requested to allow these appeals and grant retrospective planning permission for the 3 no. air conditioning units sited on the roof of the appeal site.
- 4.3 In the event that the S78 and ground (a) appeals both fail, the appellant requests that the compliance period is extended from one to three months to allow sufficient time to employ the services of a licenced technician and secure the removal the air conditioning units from the roof.