

# Enforcement Delegated Report

Receipt date:

20/06/2023

## Officer

Joshua Cheung

## Enforcement Case

EN24/0484

## Breach Address

3 Collard Place, London, NW1 8DU

## Photos & Other material



## Authorised Officer Signature



08/01/2025

## Alleged Breach

**Without planning permission: The installation of two air conditioning units located on the flat roof of the rear single storey extension.**

## Recommendation(s):

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning act 1990 as amended requiring the complete removal of the two air conditioning units, located on the flat roof of the rear single storey extension, from the site, 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.

## Site Description

The site is a three-storey, end of terrace dwelling that forms part of a modern residential development. The site has a rear single storey extension.

## Investigation History

27-JUL-23 – Email and letter sent to the owner's agent/architect and owner, respectively, regarding the unauthorised A/C units.

28-JUL-23 – Owners state that they will attempt to acquiring planning permission for the unauthorised works retrospectively.

25-OCT-23 – Retrospective Householder Application submitted ('2023/4577/P application')

09-AUG-24 – 2023/4577/P application refused with warning of enforcement action.

09-SEPT-24 – Whilst minded to pursue immediate formal action, Enforcement agree to hold in abeyance an Enforcement Notice until the appeal against the Council's decision to refuse the 2023/4577/P application is decided ('3351577 Appeal')

27-DEC-24 – 3351577 Appeal dismissed. The Inspector considers that the proposal (the unauthorised development subject to this report and Enforcement Notice) does comply with our sustainability policies (Policies CC1 and CC2 of the Camden Local Plan 2017) but agrees with the Council that it poses an unacceptable adverse impact by way of noise on the living conditions of the neighbouring occupants, contrary to Policies A1 and A4 of the Camden Local Plan 2017. The Council has had regard to this appeal decision – a copy of which is Appended as a separate document to this report (Appendix A – 3351577 Appeal Decision).

## Relevant policies / GPDO Category

### National Planning Policy Framework 2024

- Paragraph 60 – 'Enforcement'
- Paragraph 198a – 'Ground conditions and pollution'

### London Plan 2021

- D13 – Agent of change
- D14 – Noise

### Camden Local Plan 2017

- A1 – Managing the impact of development
- A4 – Noise and vibration

### Camden Planning Guidance 2021

- CPG Amenity

## Planning history of the site

2006/2046/P - Erection of a single-storey rear extension to the existing single family dwellinghouse (Class C3). **Withdrawn on the 12<sup>th</sup> July 2006.**

2008/1823/P - Erection of single-storey rear ground floor level extension with door in side boundary wall and canopy to rear in connection with the single family dwellinghouse (Class C3). **Granted on the 24<sup>th</sup> June 2008.**

2021/0857/P - Erection of single storey rear extension. **Granted on the 15<sup>th</sup> July 2021.**

\*2023/4577/P - Installation of 2x AC units. **Refused with warning of enforcement action on the 9<sup>th</sup> August 2024.**

\*Appeal APP/X5210/D/24/3351577 against the decision of the Council of the London Borough of Camden. Application reference: 2023/4577/P, for the Installation of 2x AC units. **Dismissed on the 27<sup>th</sup> December 2024.**

2024/4797/P - Proposed hip to gable roof extension with rear dormer and PV panels. **Certificate of Lawfulness (Proposed) Granted on the 6<sup>th</sup> November 2024.**

## Assessment

### Issues:

The main issues for considerations are:

- Amenity

**Policy A1 of the Local Plan** states the Council will seek to protect the quality of life of occupiers and neighbours. We will; seek to ensure that the amenity of communities, occupiers and neighbours is protected; seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities; resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport

network; and require mitigation measures where necessary. The factors we will consider include outlook, and noise and vibration levels.

**Policy A4 of the Local Plan** states the Council will seek to ensure that noise and vibration is controlled and managed. Development should have regard to Camden's Noise and Vibration Thresholds. We will not grant planning permission for: development likely to generate unacceptable noise and vibration impacts; or development sensitive to noise in locations which experience high levels of noise, unless appropriate attenuation measures can be provided and will not harm the continued operation of existing uses. We will only grant permission for noise generating development, including any plant and machinery, if it can be operated without causing harm to amenity. We will also seek to minimise the impact on local amenity from deliveries and from the demolition and construction phases of development.

These policies are reflected and supported by **CPG Amenity**.

The Council is also directed to consider:

**Paragraph 198a of the NPPF**, which states planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

**Policy D13 of the London Plan**, which states new noise and other nuisance-generating development proposed close to residential and other noise-sensitive uses should put in place measures to mitigate and manage any noise impacts for neighbouring residents and businesses. Boroughs should not normally permit development proposals that have not clearly demonstrated how noise and other nuisances will be mitigated and managed.

**Policy D14 of the London Plan**, which states in order to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise by: avoiding significant adverse noise impacts on health and quality of life; reflecting the Agent of Change principle as set out in Policy D13 Agent of Change; and mitigating and minimising the existing and potential adverse impacts of noise on, from, within, as a result of, or in the vicinity of new development without placing unreasonable restrictions on existing noise-generating uses.

Assessment:

The acoustic report of the 2023/4577/P application does not convincingly demonstrate that the unauthorised development does not pose an adverse effect to the surrounding amenity. To which, our Environmental Health Team identified that the report misinterprets the Council's Local Plan 2017 and hence proposed limits do not show compliance to the criteria. Specifically at night, the units would generate a harmful impact to the attached neighbouring property in terms of noise and vibration.

The Inspector of the 3351577 Appeal confirms these findings on this acoustic report, stating:

*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.*

*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.*

*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.*

*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.*

*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.*

*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.*

The unauthorised air conditioning units are unacceptable and fail to comply with Policies A1 and A4 of the Camden Local Plan 2017, including CPG Amenity 2021.

### **Recommendation:**

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning act 1990 as amended requiring the complete removal of the two air conditioning units, located on the flat roof of the rear single storey extension, from the site, 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:**

Without planning permission: The installation of two air conditioning units located on the flat roof of the rear single storey extension.

### **WHAT ARE YOU REQUIRED TO DO:**

1. Completely remove the two air conditioning units, located on the flat roof of the rear single storey extension, from the site; and
2. Removal all constituent materials and make good any damages caused.

### **PERIOD OF COMPLIANCE: TWO (2) months**

### **REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:**

1. The two unauthorised air conditioning units located on the flat roof of the rear single storey extension, by way of noise and vibration, have an adverse harmful impact to the amenity of neighbouring properties, contrary to Policies A1 (Managing the impact of development) and A4 (Noise and vibrations) of the Camden Local Plan 2017.