

APPEAL BY VALOURAN

**AGAINST CONDITION 6 OF PLANNING CONSENT 2024/3908/P GRANTED BY THE
LONDON BOROUGH OF CAMDEN**

31 ELSWORTHY ROAD, CAMDEN, NW3 3BT

LPA APPLICATION REF: 2024/3908/P
DATE OF DECISION: 5th FEBRUARY 2025

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1.0 SITE & SURROUNDINGS

- 1.1 The site is located on the southern side of Elsworthy Road, a residential street located to the north of Primrose Hill. The appeal site comprises of a large, three storey detached dwelling with roof accommodation.
- 1.2 The surrounding properties on Elsworthy Road comprise of large properties with mixed architectural design, including a variety of flats, semi-detached and detached houses.
- 1.4 The site has direct access to Primrose Hill.
- 1.5 The character of the area is well established as suburban. More specifically as a spacious garden suburb with generous laid out plots with tree-lined streets and communal gardens.
- 1.6 The appeal site is within the Elsworthy Conservation Area, however there are no listed buildings (statutorily or locally listed) within proximity of the site. The site, along with majority of the buildings within the Conservation Area, are identified as 'Positive Buildings' continuing to the townscape character.
- 1.7 The site has a moderate level of transport accessibility indicated by a Public Transport Accessibility Level (PTAL) of 2.
- 1.8 The site is within Flood Zone 1, indicating a low probability of flooding.

2.0 THE APPLICATION

- 2.1 The application was received by the Local Planning Authority (LPA) on the 12th September 2024 and validated on the 17th September 2024. The application was assigned reference number 2024/3908/P.
- 2.2 The application sought consent for the erection of single storey rear extension; formation of basement with pool, a front lightwell, a side lightwell and basement rooflights in ground at rear; infilling of windows and formation of a door in the side elevation; a rear planter; the replacement of front garage door with windows and the installation of five roof lights at roof level.
- 2.3 The application was submitted with a Thermal Model & Overheating Analysis prepared by E & S Bristol, Noise Survey prepared by Emtec Products Ltd and Acoustic Detailing prepared by Emtec Products Ltd, which all form part of the approved documents listed on the Decision Notice.

- 2.4 The application was granted planning permission by London Borough of Camden on 5th February 2025, citing a total of twelve conditions. Condition 6 is in dispute as part of this appeal and is thus set out, verbatim, below:

6. "Prior to the occupation of the development hereby approved, full details of Air Source Heat Pumps (ASHPs) and any mechanical ventilation shall be submitted to and approved by the local planning authority. The details shall demonstrate the ASHP system and any ventilation either has no active cooling function, or cooling deactivated by the manufacturer, or that it is an air to water heat pump system only supplying underfloor heating and/or oversized radiators. The measures shall be fully provided in accordance with the approved details and thereafter retained and maintained in accordance with the approved scheme, and no other system of active cooling shall be implemented."

Reason: In order to minimise energy consumption and following the energy and cooling hierarchies, in accordance with policies CC1, CC2, D1 of the Camden Local Plan 2017.

3.0 PROCEEDURAL MATTERS

- 3.1 Since the application was granted consent (Feb 2025) the Thermal Modelling and Overheating Analysis has been updated, to take into account further detailed design decisions that have since been made. The design changes, in so far as they relate to this appeal, relate largely to the retention of some existing windows. The results remain the same in terms of the basement rooms, however the revised figures also highlight the need for active cooling in two upper floor bedrooms. The latest version of the report is enclosed in Appendix A.
- 3.2 For clarity, in terms of the basement room layout, the floor plans has also been updated. The previously proposed 'gym' is now labelled as 'study/homework room' and shown on drawing no. 23045(01)000 P2 (Appendix B).

4.0 PLANNING HISTORY

- 4.1 There is a detailed planning history for the site, however for ease only the most recent have been referenced below:
- 4.2 New basement extension to include a pool and rear lightwell, alteration and retention of balconies at second floor rear, alterations to window openings to side elevation, new garage doors and changes to the rear elevation, all to dwelling (2021/1527/P). Application granted Subject to a Section 106 Legal Agreement on 25th January 2023.

- 4.3 New front boundary wall and gates (2022/5379/P). A Certificate of Lawfulness was granted 27th February 2023.

5.0 NATIONAL PLANNING POLICY AND LEGISLATION

LEGISLATION

- 5.1 Section 38 of the Planning and Compulsory Purchase Act 2024 requires planning applications and appeals to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 The Planning Practice Guidance (“PPG”) states that planning conditions are to be kept to a minimum and only used when they satisfy the following tests: 1) necessary; 2) relevant to planning; 3) relevant to the development to be permitted; 4) enforceable; 5) precise; and 6) reasonable in all other respects.
- 5.3 This Statement reviews the relevant Development Plan policy framework as it applies to this case. On the evidence presented it will be demonstrated that Condition 6 fails to meet all six tests set out above and hence should not have been imposed by the Local Planning Authority.

NATIONAL PLANNING POLICY

The National Planning Policy Framework (NPPF) (2024)

- 5.4 This document sets out the Government’s planning policies for England and how these are expected to be applied. At the heart of the NPPF is a presumption in favour of sustainable development, which incorporates three key strands – economic, environmental and social.
- 5.5 The following sections are relevant to the consideration of this appeal:
- Section 12 (Achieving Well Designed and Beautiful Places)
 - Section 14 (Meeting the challenge of climate change, flooding and coastal change)
- 5.6 The NPPF is a material consideration in formulating local planning policies and taking decisions on planning applications.
- 5.7 At the heart of the NPPF is a presumption in favour of sustainable development (paragraphs 7-14). For decision-taking this means approving development proposals that accord with an up-to-date development plan **without delay**.

- 5.8 Paragraph 57 of the National Planning Policy Framework states *“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making.”*
- 5.9 Paragraph 139 states that development that is not well designed should be refused and conversely, **significant weight** should be given to development that reflects local design policies and government guidance on design.
- 5.10 Paragraph 167 requires local planning authorities to give significant weight to the need to support energy efficiency and low carbon heating improvements to existing buildings, including through installation of heat pumps.

6.0 THE DEVELOPMENT PLAN

- 6.1 For the purposes of this appeal, the adopted Development Plan for the London Borough of Camden comprises the London Plan (2021) and the Camden Local Plan (2017). The following policies are considered relevant to the appeal site:

The London Plan (2021)

- 6.2 The London Plan is the spatial development strategy for London and sets out the concept of Good Growth, which is defined as being socially and economically inclusive and environmentally sustainable.
- 6.3 Policy S12 of the London Plan refers to minimising greenhouse gas emissions and sets out requirements for major developments. It is noted that this proposal is a householder scheme. Paragraph 9.2.12 of the policy postamble states that Boroughs are encouraged to request energy strategies for other development proposals where appropriate and should contain ‘f) *the results of dynamic overheating modelling which should be undertaken in line with relevant Chartered Institution of Building Services Engineers guidance, along with any mitigating factors*’.
- 6.4 Policy S14 of the London Plan refers to managing heat risk and states that development proposals should minimise adverse impacts on the urban heat island through design, layout, orientation, materials and the incorporation of green infrastructure. Paragraph 9.4.5 of the policy postamble sets out the relevant guidance on assessing and mitigating overheating risk in developments, which can also be applied to refurbishments (TM59 from the Chartered Institute of Building Services Engineers).

Camden Local Plan (2017)

- 6.5 The Camden Local Plan 2017 sets out the visions, objectives and related strategic planning policies for delivering development in Camden.
- 6.6 The condition subject to this appeal, cites policies CC1, CC2 and D1 of the Local Plan.
- 6.7 Policy CC1 refers to climate change mitigation and requires developments to minimise the effects of climate change by following the steps in the Energy Hierarchy (set out in the policy postamble).
- 6.8 Policy CC2 refers to adapting to climate change and encourages development to adopt appropriate climate change adaptation measures including reducing the impact of dwelling overheating by application of the cooling hierarchy.
- 6.9 Policy D1 requires high quality design in all new development.

Camden Planning Guidance – Energy Efficiency and Adaption (2021)

- 6.10 Chapter 3 refers to making buildings more energy efficient and sets out that 'passive' measures should be prioritised over active measures to reduce energy. Paragraph 3.14 refers to cooling and states that 'air conditioning will only be permitted where thermal modelling demonstrates a clear need for it after all preferred measures are incorporated', and goes on to say, 'if active cooling is unavoidable, applicants need to identify the cooling requirement and provide details of the efficiency of the system'.
- 6.11 Paragraphs 5.14 to 5.16 refer to Air Source Heat Pumps and sets out that as they can produce cool air as well as heat, they can be suitable in buildings that may otherwise require air conditioning.
- 6.12 The document is silent on the type of rooms that can benefit from cooling, nor does it state that active cooling can only be provided when considered 'essential' (see paragraph 7.13 below regarding the Council's application of the term 'essential').

7.0 THE APPELLANT'S CASE

- 7.1 The Site has been granted planning permission for the alterations and extensions to an existing dwelling house. Consent was granted in February 2025 and included twelve conditions (Appendix C).
- 7.2 The application as submitted included the installation of an air source heat pump (ASHP), which was supported by a Thermal Modelling and Overheating Analysis that demonstrated active cooling would be required. Along with these details, the application included a noise survey and acoustic detailing relating to the discharge grilles for the ASHP.
- 7.3 Prior to issuing the decision notice the Local Planning Authority (LPA) provided a list of suggested conditions, including condition 6. Subsequently, discussions were held with the LPA regarding the necessity, relevance and appropriateness of condition 6, given that it sought to restrict development subject to the application, and that the requirements set out in the London Plan and Camden Local Plan policies had been met. Notwithstanding the information provided and the LPA's agreement that the relevant documentation had been submitted, the condition was attached to the Council's decision. (The email correspondence is included in Appendix D).
- 7.4 This appeal is made against Condition 6 of permission reference 2024/3908/P. Condition 6 states: *"Prior to the occupation of the development hereby approved, full details of Air Source Heat Pumps (ASHPs) and any mechanical ventilation shall be submitted to and approved by the local planning authority. The details shall demonstrate the ASHP system and any ventilation either has no active cooling function, or cooling deactivated by the manufacturer, or that it is an air to water heat pump system only supplying underfloor heating and/or oversized radiators. The measures shall be fully provided in accordance with the approved details and thereafter retained and maintained in accordance with the approved scheme, and no other system of active cooling shall be implemented."*
- 7.5 The reason for imposing this is as follows: *"In order to minimise energy consumption and following the energy and cooling hierarchies, in accordance with policies CC1, CC2, D1 of the Camden Local Plan 2017"*.
- 7.6 It is the appellants case that this condition fails the condition tests, as it is unnecessary and irrelevant to the development permitted. These matters are discussed in turn below.

Necessary

- 7.7 Paragraph 57 of the NPPF sets out that planning conditions should only be imposed where they are necessary, which is generally taken to mean that the condition is necessary to ensure that development adheres to local planning policies whilst mitigating any potential negative impacts.
- 7.8 In this instance, condition 6 requires further details to be provided to the LPA, tantamount to confirmation that the ASHP and any ventilation either has no active cooling function, or cooling deactivated by the manufacturer, or that it is an air to water heat pump system only supplying underfloor heating and/or oversized radiators. However, it is the appellants case that the application as submitted clearly set out that active cooling is required, given the results of the thermal modelling and the resulting overheating analysis.
- 7.9 Policy CC2 of the Camden Local Plan (d) states that development should include measures to reduce the impact of urban and dwelling overheating, including application of the cooling hierarchy. Paragraph 8.41 of the policy postamble states that new development will be expected to submit a statement demonstrating how the London Plan's cooling hierarchy has informed the building design. It goes on to say 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. To this end, thermal modelling was carried out which demonstrates where overheating is expected to occur, which was submitted with the application for the LPA's consideration.
- 7.10 The purpose of the overheating analysis was to establish whether the internal temperatures simulated within the model achieve the requirements of the Chartered Institution of Building Services Engineers (CIBSE) thermal comfort metric TM59. This is aimed specifically at refurbishment of residential buildings and is set out in paragraph 9.4.5 of the London Plan as appropriate guidance for assessing and mitigating against overheating risk. The analysis also sets out three scenarios, in line with the cooling hierarchy, to ascertain how the building will perform throughout year. The full document is submitted with the appeal for the Inspectorates review (Appendix A); however it is worth highlighting that the analysis confirms that whilst the introduction of natural, passive and mechanical ventilation does assist in reducing internal temperatures and the extent of overheating, it alone is not sufficient mitigation to meet compliance. Consequently, mechanical cooling is required within the basement and two upper floor bedrooms to achieve compliance and ensure thermal comfort.

- 7.11 Following the submission of this document, the LPA initially raised no concerns or objections with the methodology followed, assessment of results or the conclusions drawn. It wasn't until the draft decision notice, containing the proposed conditions was issued that it became apparent that the Council was disregarding the Thermal Modelling and Overheating assessment, which clearly concludes that parts of the building (originally one room in the basement and now within the updated assessment, two additional upper floor bedrooms) will not achieve compliance with TM59 without some form of active cooling.
- 7.12 The LPA have stated that the condition is required in order to minimise energy consumption and follow the energy and cooling hierarchies. The information submitted with the application to demonstrate the need for the ASHP clearly sets out how energy consumption will be minimised and how the cooling hierarchy has been followed, both in accordance with the London Plan and Camden Local Plan.
- 7.13 During discussions with the LPA throughout the application process, and as set out in the officer's report, it is clear that the LPA's objections are in fact in relation to the nature of the rooms being cooled; *'The Council's Sustainability Team is of the view that the cooling of these rooms is not essential and that mechanical ventilation of the rooms is contrary to the policy and guidance for energy efficiency and climate change mitigation. A condition to prevent the use of the mechanical plant for ventilation is therefore attached accordingly'* (Officers Report 2024/3908/P). As such, consideration needs to be given as to whether the relevant policies seek to restrict active cooling to specific rooms, despite instances where thermal modelling and overheating assessment confirm non-compliance with TM59.
- 7.14 Taking the London Plan first, policy SI4 – Managing Heat Risk, requires development proposals to minimise adverse impacts on the urban heat environment through design, layout, orientation, materials and incorporation of green infrastructure, which in this instance has been done. The overheating relates in part to a basement area which is restricted in terms of openings and orientation and in the case of the upper floors, the retention of existing windows. There are no requirements in the policy, nor in the policy pre or post amble, that once the cooling hierarchy has been followed, active cooling can only apply to certain rooms. There is no mention or definition of what would constitute 'essential'.
- 7.15 Turning to the Camden Local Plan policies CC1 and CC2, both policies are clear on the requirement to follow the energy and cooling hierarchies to ensure that it has informed building design, which has been done in this instance. However, Paragraph 8.42 of the CC2 post amble is clear when it states, *'Active cooling will only be permitted where dynamic thermal modelling demonstrates*

there is a clear need for it after all the preferred measures are incorporated in line with the cooling hierarchy'. The submitted Thermal Modelling and Overheating Assessment has plainly demonstrated that there is an evident need, even after all the preferred measures are incorporated. What is not set out in either policy, or the pre or post ambles, is the requirement for any active cooling to only be applied to 'essential' rooms, nor is any definition provided for what would be considered an 'essential' room.

- 7.16 It is therefore the Appellants case that the LPA has misapplied the intention of their adopted policies, and those of the London Plan, to seek to control active cooling within the building, despite not objecting to the supporting documents that set out why and where cooling is required. The policies referred to do not set out that once the requirement for cooling is established, it can only be implemented in certain rooms or places, but rather that it can only be provided if and when a need has been established (which has been done in this case).
- 7.17 Notwithstanding the above, it is also noted that since the initial application, the room layouts within the basement have evolved, and where the application sought cooling for a gym, which the Council did not consider to be 'essential', the room is now proposed for the purposes of 'study/homework'. In any event, under the CIBSE TM59 guidance, and as set out in paragraph 6.1 of the accompanying Thermal Model and Overheating Assessment, habitable spaces are defined as rooms where individuals are expected to spend prolonged periods, such as living rooms, bedrooms and other regularly occupied areas in residential buildings such as a study or a gym. Therefore, in this case, the basement room requiring cooling is considered habitable (as either a study or a gym) as set out under the CIBSE TM59 guidance, and therefore even if a test of 'essential' was appropriate, the development subject to this appeal would still comply.
- 7.18 Without the imposition of this condition, the proposed development would still be considered acceptable, the active cooling has been provided following the appropriate assessment of the thermal performance of the building, and subsequent consideration of the energy and cooling hierarchies, which is the exact approach set out in the London Plan policies and adopted Camden Plan policies.
- 7.19 It is therefore the appellants case that for the reasons set out above, condition 6 attached to consent 2024/3908/P is not necessary and for that reason, fails the condition tests.

Reasonable

- 7.20 Paragraph 57 of the NPPF sets out that planning conditions should only be imposed where they are reasonable in all other respects, which can generally be taken as being sound, fair and sensible.
- 7.21 Further to what has been set out above, which can also be described as being an unreasonable approach to the application of the adopted policies, it is also the Appellants case that the application of the adopted policies in this way is unreasonable, given other decisions within the Borough.
- 7.22 Enclosed in Appendix F is a Decision Notice and Officers report for a recent development at No. 2 Elsworthy Terrace (Council ref.2023/5350/P). The development site is located some 150m from the appeal site and was granted consent in May 2024 (i.e. under the same adopted policies being applied to the development subject to this appeal). This development included a new air conditioning condenser unit, and was accompanied by an Overheating Report, which set out that active cooling was required. The relevant section of the Officers Report is quoted verbatim below;

'In terms of the ASHPs which would have a cooling function, the applicant has submitted an Overheating report which included an assessment against the cooling hierarchy as required under the CPG Energy efficiency and adaptation (2021). The cooling hierarchy confirms that in order to minimise the need for active cooling, various energy efficiency and passive design measures, as well as the use of mechanical ventilation, have been employed in the dwelling to minimise and manage the amount of heat in the dwelling. Despite these measures, the dynamic simulation has found that the passive design steps outlined in the cooling hierarchy are not sufficient to mitigate the risk of overheating. In addition, due to security issues, it is not feasible for the bedroom windows to be left open overnight. Therefore, the use of active cooling to provide comfort to the occupants of the dwelling is considered appropriate in this instance. The use of active cooling would be limited to those rooms identified as being overheated in the report, namely the three bedrooms, main living/kitchen and dining area, utility, master bedroom and dressing room'.

- 7.23 It is clear from this decision, that the Council have taken a significantly different approach to the assessment of the development subject to this appeal. In the case of this appeal, the cooling hierarchy has been followed, the same security issues exist with ground and basement windows being left open, and a variety of rooms require cooling, including a proposed utility room. However unlike in the example given above, the Council have instead applied a test of 'essential' to the rooms requiring cooling, which is a departure from previous consents and therefore represents unreasonable behaviour in the imposition of condition 6.

- 7.24 It is the appellants case that this condition is unreasonable, given that it is not supported by adopted policies, and is not an approach taken elsewhere.

Summary

- 7.25 Given all of the above, it is the appellants case that condition 6, as applied to the grant of planning consent 2024/3908/P by the London Borough of Camden, should be removed from the consent on the basis that it fails the condition tests by way of not being necessary and not being reasonable. It is therefore respectfully requested that the Inspectorate remove condition 6 from planning consent 2024/3908/P.
- 7.26 Should the Inspector disagree that the condition should not be removed from the grant of planning consent, it is open to the Inspector to vary the condition. The following wording is provided, which would allow for active cooling, within those rooms identified by the Thermal Modelling and Overheating Assessment.

Suggested Condition

6. The Air Source Heat Pump (ASHP) and any mechanical ventilation shall be installed on site in accordance with the details set out in the Thermal Modelling and Overheating Assessment, prepared by E & S Bristol and dated March 2025, and provide active cooling only to those rooms identified as requiring active cooling. The measures shall be fully provided in accordance with the approved details and thereafter retained and maintained in accordance with the approved scheme, and no other system of active cooling shall be implemented."

Reason: In order to minimise energy consumption and following the energy and cooling hierarchies, in accordance with policies CC1, CC2, D1 of the Camden Local Plan 2017".

8.0 CONCLUSION

- 8.1 The appeal proposal seeks to remove (or vary) Condition 6 of permission reference 2024/3908/P, on the basis that it fails the relevant condition tests.
- 8.2 The condition, requiring active cooling to be disabled, is not necessary or reasonable.

- 8.3 The details provided with the application, comprising Thermal Modelling and Overheating Assessment, confirm that despite following the cooling hierarchy, the development would not meet the requirements of TM59 (as set out by the London Plan), and therefore requires active cooling.
- 8.4 In cases where overheating has been established, it is an acceptable approach to provide active cooling to those specific rooms, as set out in policies CC1 and CC2 of the Camden Local Plan and policy SI4 of the London Plan.
- 8.5 For the reasons provided above, the Inspector is respectfully requested to allow the appeal as made and remove condition 6.