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The Planning Inspectorate

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Dear Rebecca Gray

Planning and Enforcement Appeals by Mr Ashley Donoff

Site: 9 Briary Close, , NW3

1: Appeal against refusal of planning permission 2024/3724/P(dated 05/12/2024) for: 'Retrospective application for 3 x AC Units on the roof' was refused for the following reason:

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.

2: Appeal against Enforcement Notice EN24/0017 (dated 12/12/24), requiring removal of 3 x air conditioning units which was served for the same reason as above

The Council's case is set out in detail in the attached Officer's Delegated Report, and it will be relied on as the principal Statement of Case. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire. In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

1. Summary

Site and Designations

- 1.1. The application building is a two-storey dwelling with a single-storey rear extension, located within Briary Close, Swiss Cottage. It forms part of a homogeneous 20th century residential estate development. It is not within a conservation area nor a listed building.
- 1.2. There are several extant planning permissions to extend the building and create additional habitable rooms. Please refer to the 'planning history' section of the officer delegated report for full details.

2. Status of Policies and Guidance

- 2.1. The London Plan 2021 is the Spatial Development Strategy for Greater London. The Plan is part of the statutory development plan for London, meaning that the policies in the Plan should inform decisions on planning applications in all London Boroughs. The relevant London Plan policies as they relate to the reason for refusal are:

Policy D1: London's form, character and capacity for growth

Policy CC1: Climate change mitigation

Policy CC2: Adapting to climate change

- 2.2. The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on 3rd July 2017 as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reason for refusal are:

Policy A1: Managing the impact of development

Policy A4: Noise and vibration

Policy D1: Design

Policy CC1: Climate change mitigation

Policy CC2: Adapting to climate change

The Council also refers to supporting guidance documents. The Camden Planning Guidance (CPG) was adopted following the adoption of the Camden Local Plan in 2017. There have been no changes to the relevant policies since the application was refused. The following documents, which support the implementation of the Camden Local Plan policies, are relevant to the assessment of this application:

Camden Planning Guidance: Home Improvements (2021)

Camden Planning Guidance: Design (2021)

Camden Planning Guidance: Amenities (2021)

Camden Planning Guidance: Energy Efficiency and Adaptation (2021)

- 2.3 It is also noted that the Council has published the Proposed Submission Draft of the new Camden Local Plan (April 2025), which was approved by Cabinet on 2 April 2025 and published on 3 April 2025. While the draft plan has only recently completed the Regulation 18 consultation stage and can be afforded limited weight at this time, it remains a material consideration. The emerging plan includes strengthened sustainability policies, including a requirement to follow the cooling hierarchy. Active cooling will not be supported unless it is demonstrated that all feasible passive measures have been fully integrated into the design.

3. Comments on Appellant's grounds of appeal

- 3.1. The appellant's case is set out in a document prepared by the appellant's planning agent, AFA Planning Consultants.
- 3.2. The Council will summarise the key points in the Appellant's 'Appeal Statement' and respond to each point in turn.
- 3.3. Section 3 of the Appellant's 'Appeal Statement' addresses the principle of installing the proposed air-conditioning units. The applicant has submitted a report demonstrating the necessity of the air-conditioning units, satisfying some

of the policy requirements. However, the Council wishes to flag five matters for consideration.

- 3.4. Responding to 3.8-3.11, the application for active cooling via three air conditioning units has been assessed against the requirements of Camden Local Plan Policies CC1 and CC2, as well as the Energy Efficiency and Adaptation Supplementary Planning Guidance (CPG). Policy CC2 and the cooling hierarchy emphasize the importance of adopting passive cooling measures and reducing reliance on active cooling systems. This is in line with the aims of Policy CC1, which discourages measures that increase energy consumption and carbon emissions, such as air conditioning, unless there is a demonstrated and justified need.
- 3.5. Despite the applicant's efforts to address concerns raised during the application process, the current proposal still fails to meet the necessary requirements outlined in these policies. Specifically, the applicant has not sufficiently demonstrated that all passive measures, as required by the cooling hierarchy, have been adequately incorporated and assessed before resorting to air conditioning.
- 3.6. Responding to point 3.18, the installation of photovoltaic (PV) panels to offset energy consumption is acceptable and aligns with Camden's sustainability goals. However, it does not mitigate the core concerns raised in the officer's report regarding the increase in energy consumption and carbon emissions due to the use of air conditioning systems. While solar panels reduce the overall energy demand, they cannot fully offset the significant increase in energy consumption and emission associated with the use of active cooling systems, particularly air conditioning. The use of air conditioning is still contrary to the aims of Policies CC1 and CC2, which emphasize energy efficiency and reducing carbon emissions. The energy required for air conditioning systems, even when partially offset by solar panels, can still contribute to an increase in the urban heat island effect and overall carbon footprint. This remains a key concern under the principles of the London Plan and Camden's local guidance, particularly with the preference for passive cooling measures.
- 3.7. In response to point 3.15, the applicant has submitted a Dynamic Thermal Model (DTM) based on TM59:2017, which seeks to assess the risk of overheating and the effectiveness of passive cooling measures. While the inclusion of internal window blinds in the model has led to some improvements, it is noted that ceiling fans have not been incorporated into the DTM—despite previous requests and guidance to do so. The applicant's assertion that ceiling fans cannot be factored into the assessment contradicts the provisions of TM59:2017, which explicitly state that ceiling fans must be considered when they are proposed as part of a new build or refurbishment. TM59:2017 further requires that airspeed assumptions be elevated accordingly. The omission of ceiling fans is therefore significant, as they are a cost-effective and energy-efficient method of mitigating overheating, particularly in residential settings. Their exclusion suggests that the applicant has not fully explored or integrated all feasible passive and design measures prior to turning to active cooling solutions.
- 3.8. In addition, the sustainability officer raised further points in the initial assessment that remain unaddressed. Specifically, while it is acknowledged that external solar shading may be constrained on the front façade due to conservation or urban design considerations, the officer advised that such measures could feasibly be introduced on the rear extension. This recommendation appears to have been omitted from the applicant's revised

submission, despite its potential to reduce overheating in a manner consistent with the cooling hierarchy.

- 3.9 Responding to 3.17, the applicant has also failed to incorporate the use of Mechanical Ventilation with Heat Recovery (MVHR) with air tempering as part of the cooling hierarchy. MVHR systems with air tempering actively cool incoming air rather than cooling air inside the building, making them a more energy-efficient option compared to traditional air conditioning systems. Given their lower energy demand, MVHR systems should be prioritised over air conditioning units in line with the cooling hierarchy. The failure to adequately consider this option is a further reason to refuse the appeal.
- 3.10 In the written representation submitted for the appeal, the applicant has stated that ceiling fans and tempered MVHR are not included within cooling hierarchy as set out within SPD. In the cooling hierarchy outlined in Camden Planning Guidance – Energy efficiency and adaptation, it states the mechanical ventilation to “ensuring the most efficient system possible”, and the active cooling to “ensuring they are the lowest carbon options.”. While the cooling hierarchy does not explicitly include fans and MVHR with air-tempering as one of the measures, they are considered within the range of options that contribute to identifying the most efficient and low-carbon system. It should be noted that the cooling hierarchy doesn’t specifically mention ‘air conditioning’ but refers to ‘active cooling’. Furthermore, as defined in the Part O building regulation, “mechanical ventilation fans” is considered a passive means of cooling, which is applicable to the new extensions of the development. Hence, it is considered relevant to the design options and solutions to reduce overheating for this dwelling.
- 3.11 Were the applicant to have applied for planning permission and overheating were shown after all passive measures from the cooling hierarchy were considered they would have been advised to consider lower energy and carbon cooling option of MVHR with air tempering before considering air conditioning.
- 3.12 In response to points 3.16 and 3.18, while we acknowledge the appellant’s reference to their medical condition and the beneficial impact of the MVHR (Mechanical Ventilation with Heat Recovery) system with pollen filters on their health and wellbeing, it is important to clarify the scope of planning considerations. While planning does consider broader health impacts, such as indoor air quality and pollution, individual medical circumstances fall outside the remit of the planning process, which is focused on the built environment, sustainability, and energy efficiency. It is also relevant to note that MVHR systems with appropriate filtration, not air conditioning which are more effective at preventing the ingress of pollen, particularly when windows are closed. The appellant’s justification for air conditioning on the basis that windows cannot be opened due to pollen is therefore not fully substantiated in planning terms. Furthermore, it is worth noting that tree pollen typically peaks in spring, while grass pollen is more prevalent in early summer, and may not necessarily coincide with the hottest periods of the year when overheating is most critical. While the concern regarding overheating is acknowledged, the planning policy approach, as set out in the Camden Local Plan and emerging policy, which requires that all feasible passive and low-energy design solutions, such as MVHR with air tempering, be thoroughly explored and integrated before active cooling systems like air conditioning are considered acceptable. The emphasis remains on minimising energy demand, reducing carbon emissions, and promoting long-term sustainability.
- 3.13 The applicant has not provided sufficient justification for the need for three air conditioning units to mitigate overheating. While the applicant’s dynamic thermal modelling and passive cooling measures show some improvement, there is no supporting information to justify why three air conditioning units are required to reduce temperatures to acceptable levels.

Enforcement Matters: appeal on grounds a) and g)

- 3.9. The Grounds of Appeal Statement submitted by the appellant states that “appeals against both the planning refusal and the Enforcement Notice (grounds (a) & (g)) have been made”. However, as ground a) was barred the only ground that is being progressed is ground g. Nevertheless ground a) has been addressed above in the planning appeal rebuttal

Ground G- that the time given to comply with the notice is too short.

- 3.10 The appellant states that 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. They have failed to provide any evidence of this timeframe.
- 3.11 The Council considers that one month is a reasonable timeframe for compliance, but requests, if the inspector is minded to extend the compliance period, that this extension be no more than two months from the date of the decision. The appellant has indicated that longer than a month would be required but not longer than two, and the LPA has a duty to ensure that unauthorised equipment is not kept in place longer than necessary.

4. Conclusion

- 4.1. It is considered that the proposal remains unacceptable for reasons set out within the original decision notice and delegated report. The information submitted by the appellant in support of the appeal does not overcome or address the Council’s concerns. For these reasons the proposal fails to meet the requirements of policy and therefore the Inspector is respectfully requested to dismiss the appeal.
- 4.2. Should the Inspector be minded to allow the appeal, suggested conditions are outlined below.

Should any further clarification or submissions be required, please do not hesitate to contact Henry Yeung by the direct dial telephone number or email address quoted in this letter.

Yours sincerely,

Henry Yeung
Planning Officer
Planning Solutions Team

Appendix A

Suggested conditions should the appeal be allowed.

Should the Inspector be minded to allow the appeal, the Council respectfully requests the following conditions to be attached the permission:

- 1.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 124; 125; 135; 134; PLANNING STATEMENT; Block Plan; Plant Noise Assessment; Overheating Risk & Energy Assessment Revision 2

Reason: For the avoidance of doubt and in the interest of proper planning.

3. All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.

4. The external noise level emitted from plant, machinery or equipment at the development with specified noise mitigation hereby approved shall be lower than the typical existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with machinery operating at maximum capacity and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from mechanical installations/ equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017

5. Within 2 months of this decision , the air conditions units (machinery, plant or equipment) at the development shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by vibration in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017

6. The development should demonstrate that measures to adapt to climate change have been implemented and that overheating risk has been managed. It needs to demonstrate that the development has reduced cooling demand as far as possible and that the cooling hierarchy has been followed and any feasible measures implemented.

Reason: To ensure that all development reduce the impact of urban and dwelling overheating, including application of the cooling hierarchy in accordance with policy CC2 of the London Borough of Camden Local Plan