

Notice of Appeal

Appeal by Splendid (Euston) Limited

Four Points Flex Hotel, Euston

March 2025

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1. Introduction

- 1.1. This Notice of Appeal, setting out the grounds of appeal, is submitted on behalf of Splendid (Euston) Limited (“the Appellant”) against Enforcement Notice (“EN”) EN24/0526 issued by LB Camden Council (“the LPA”) on 11th February 2025, and which (if not for this appeal) would have come into effect on 26th March 2025.
- 1.2. The Notice relates to the following alleged breach of planning control:

“Without planning permission: installation of 4x Air Source Heat Pump units and associated acoustic enclosure on the flat roof of the single storey substation located adjacent to the Hotel on the Woburn walk elevation.”
- 1.3. The single storey substation located adjacent to the Hotel on Woburn Walk is henceforth referred to as “the Appeal Site”. The Four Points Flex by Sheraton London Euston, formerly known as the County Hotel, which the Appeal Site is a part of, is henceforth referred to as “the Hotel”.
- 1.4. The appeal is made under grounds (a) and (g) of s.174(2) of the Act. The ground (g) appeal is made without prejudice to the ground (a) appeal.

2. Planning History and Context

Planning History

- 2.1. Prior to a planning approval in 2014, the Hotel's Woburn Walk elevation was characterised by a high painted brick wall capped with razor wire. Planning permission was granted on 8 July 2014 (LPA ref. 2023/2778/P) for a redesign of the Woburn Walk elevation with the following description:

"Installation of new shopfront to the rear section of the building to Woburn Walk elevation with associated entrance, external decking, access stair and railings for use by the ancillary restaurant following the conversion of the existing conference room in association with the existing hotel use and the display of 3 x non-illuminated advertisement to the front and side elevations."

- 2.2. A more recent programme of comprehensive renovation began in 2023, comprising of the following planning applications:

- 2.3. Planning permission was granted for the following on 4 October 2023 (LPA ref. 2023/2778/P):

"The replacement of single glazed windows with double glazed units across all elevations; replacement roof plant including installation of PV panels and associated works."

- 2.4. Planning permission was granted for the following on 27 February 2024 (LPA ref. 2023/3680/P):

"Erection of a single storey extension, erection of an electrical substation, following the demolition of the existing substation & enclosure installation of new front entrance, removal of a goods lift and enclosure from the front of the building, all on Woburn Walk at ground floor level, replacement of the existing goods platform lift to the front elevation and amendments to the rear terrace (south) at basement level and erection of an open-sided canopy."

- 2.5. This was subsequently amended on 19 November 2024 via an s.73 application (LPA ref. 2024/2183/P):

"Variation of condition 2 (approved drawings) of planning permission 2023/3680/P dated 13/03/2024 for the Erection of a single storey extension, erection of an electrical substation, following the demolition of the existing substation & enclosure installation of new front entrance, removal of a goods lift and enclosure from the front of the building, all on Woburn Walk at ground floor level, replacement of the existing goods platform lift to the front elevation and amendments to the rear terrace (south) at basement level and erection of an open-sided canopy.; namely, changes external changes to the replacement gates, changes to doors and windows, revised staircase design, revised canopy design and inclusion of a security gate) and a revised platform lift."

- 2.6. Planning permission was refused for the following on 5th February 2025 (LPA ref. 2024/3948/P):

“Retention of the existing air source heat pumps and kitchen extract plant, and the erection of acoustic screening on the electrical substation and kitchen roofs to replace the existing louvre screens.”

- 2.7. In response an application for the following was submitted on 28 February 2025 and is due to be determined (LPA ref. 2025/0886/P):

“Relocation of the existing/temporary air source heat pumps and associated structure to rear external terrace, and the erection of acoustic louvred enclosure.”

Enforcement Notice

- 2.8. The EN was issued on 11 February 2025. Absent this appeal, the effective date would have been 26 March 2025, and the compliance date is one month after the effective date.

- 2.9. The enforcement notice alleges a breach of planning control:

“Without planning permission: installation of 4x Air Source Heat Pump units and associated acoustic enclosure on the flat roof of the single storey substation located adjacent to the Hotel on the Woburn walk elevation.”

- 2.10. The enforcement notice has stated the following reasons for issuing the notice:

“a) The development has occurred within the last 4 years.

b) The air source heat pump units and louvre screening by reason of their size, design and location result in a dominant, incongruous and disproportionate addition to the roof top, causing harm to the character and appearance of the host building and conservation area and to the setting of the adjacent Grade 11 listed building, contrary to Policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017”*

- 2.11. The stated requirements of the EN are:

*“Within a period of **ONE (1) month** of the Notice taking effect:*

1. Completely remove the 4x Air Source Heat Pumps;

2. Remove acoustic enclosure; and

3. Make good any damage caused as a result of the above works.”

3. Grounds of Appeal

3.1. The Appellant appeals against the EN. First, on the grounds that planning permission should be granted for the subject development – promoted under ground (a). Second, should the Inspector disagree with the ground (a) appeal, that the period of one month given to comply with the notice should be extended under ground (g).

3.2. Both of the grounds of appeal are in the alternative and without prejudice to the other.

Ground (a) – that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted

Alternative Scheme

3.3. The Appellant concedes that the scheme as-built is, on balance, unacceptable in planning terms owing to the temporary nature of the screen, but can be modified to be acceptable, and regularised by part-prospective part-retrospective planning consent. Consequently, an Alternative Scheme is promoted, for which planning permission is sought via this appeal under ground (a).

3.4. The Inspector's legislative power to grant planning permission for this Alternative Scheme lies at s.177(1)(a), which states that he/she may *"grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates"* (emphasis added).

3.5. This sub-section of the Act has been the subject of much case law. Most relevant here is the Court of Appeal's *Ahmed* Judgment¹, which upheld the High Court's ruling that *"the Inspector overlooked an obvious alternative that could have remedied the breach of planning control that was the object of the notice – namely the possibility of varying the [notice], as requested by the appellant under ground (f), and at the same time granting retrospective planning consent under section 177, which provides a power to grant consent in respect of part of the matters that were the subject of the notice (namely that part of the building which could remain standing in accordance with the prior consent had it not lapsed). The Appellant was, at the time, deemed also to have made a planning application under ground (a). For the purposes of that application, and treating the Appellant's submissions as a whole in accordance with the approach in Moore, it was in my judgment incumbent on the Inspector at least to consider whether to exercise his power to vary the notice and grant consent in accordance with the proposal made under ground (f). Having concluded that he lacked the power to vary the order under section 176 standing alone, recourse to section 177(1) and section 174(2)(a) was the obvious alternative course which could*

¹ *Ahmed v SoSCLG & LB Hackney Council* [2014] EWCA Civ 566 (Appendix 7)

have overcome the planning difficulties, at less cost and disruption than total demolition. In failing to address his mind to this possibility, the Inspector in my judgment erred in law.”

The appeal under ground (a) should be allowed and planning permission granted in accordance with s.177(1). The issue for consideration is whether planning permission should be granted for the whole or any part of the matters stated in the enforcement notice as constituting a breach of planning control. The Inspector is under a duty to consider any obvious alternatives (see *Tapecrow v First Secretary of State* [2007] EWCA 1744²) and an Inspector is able to grant planning permission in respect of new works: see *Bhandal v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 2724³. The essential question is whether the proposed works would be “*in relation to the whole or part of the development enforced against*” (see para. 17 of the Judgment); that is a matter of judgement for the Inspector.

- 3.6. The Alternative Scheme proposal, which simply replaces the temporary screen with a more attractive permanent screen, would comply with that test; it is a matter directly related to the breach of planning control; it is not extraneous to the development enforced against.
- 3.7. The introduction of this Alternative Scheme should not meaningfully prejudice the Council's position since it is very similar to the as-built scheme, and does not increase the scope of planning considerations. The Appellant is of course content for the Council to be given an opportunity to comment on this Alternative Scheme.

Assessment of Alternative Scheme

- 3.8. A part-retrospective part-prospective application for the retention of the air source heat pumps as currently installed and the addition of a louvred plant screen (to replace the temporary screen as currently installed) – i.e. consistent with the Alternative Scheme described above – was refused on 5th February 2025 (LPA ref. 2024/3948/P). The reason for refusal was:

“The air source heat pump units and louvre screening, by reason of their size, design and location, result in a dominant, incongruous and disproportionate addition to the roof top, causing harm to the character and appearance of the host building and conservation area and to the setting of the adjacent Grade II Listed Building, contrary to Policy D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.”*

- 3.9. The ASHPs are part of a wider refurbishment of the hotel which, prior to renovation works by the Appellant, had suffered from a lack of maintenance and investment. As set out in the Technical Note submitted with the refused part-retrospective application (Appendix 1), the hotel cannot function without

² Appendix 5

³ Appendix 6

the air source heat pump (ASHP) units in question given they supply the hotel's hot water and, due to manufacturer restrictions on maximum pipe lengths, these units cannot be located on the main roof.

- 3.10. The assertion that the ASHP units, as currently located, and louvred screen would result in a “*a dominant, incongruous and disproportionate addition to the roof top, causing harm to the character and appearance of the host building and conservation area and to the setting of the adjacent Grade II* Listed Building*” is refuted by the Appellant. A Heritage Statement (Appendix 2), assessing the ASHP and screen in relation to the host building, conservation area and adjacent building, was submitted with the part-retrospective application (LPA ref. 2024/3948/P).
- 3.11. The Heritage Statement finds that (1) the ASHPs are a vital aspect of the wider refurbishment of the hotel and, as such, form part of a contribution to the positive management of the Conservation Area and (2) that the proposed screening was carefully considered and would be a welcome introduction to the building and streetscape in design terms.
- 3.12. The Appeal Site and Hotel are located in the Bloomsbury Conservation Area. The Conservation Area Appraisal and Management Strategy⁴ explains that the Area is vulnerable to negative change through deterioration of the built fabric arising from neglect and lack of maintenance. The Heritage Statement finds that the ASHPs are part of a wider effort to refurbish a positive contributor to the Conservation Area and upgrade its energy infrastructure to sustainable standards.
- 3.13. The ASHPs are currently screened from public view by a panelled enclosure, which was installed as a temporary measure by the Appellant. A permanent, ornamental enclosure screen was proposed by the Appellant as part of the part-retrospective application (LPA ref. 2024/3948/P). The Heritage Statement found that the proposed screen would have provided welcome contrast with the strong verticality of the adjacent Woburn Walk terrace while respecting the brick tones of the Hotel and wider townscape context.
- 3.14. The ornamental screen that formed part of the refused part-retrospective application is proposed as part of this appeal, as an alternative to the temporary screening currently in place. The ASHPs, as enclosed within the proposed ornamental screening would be in compliance with Policy D1 (Design) and D2 (Heritage).
- 3.15. The aspects of Policy D1 that are most relevant to this appeal require development to respect local context, adhere to sustainable design and construction, comprise details and materials that are of high quality and complement local character and integrate well with surrounding townscape.
- 3.16. The proposed plant screen has been designed in response to Policy D1 guidance as set out in the Design and Access Statement (Appendix 2) and would fulfil the Policy's urban design requirements. The

⁴ 2011

ASHPs, which serve to upgrade the building's energy performance, promote compliance with the Policy D1 requirement for sustainable design practices.

- 3.17. The aspects of Policy D2 that are most relevant to this appeal require development to preserve or enhance the appearance of conservation areas and prohibit harm to significance of a listed building through an effect on its setting.
- 3.18. The Heritage Statement has assessed the proposed screen and wider hotel refurbishment as having a positive contribution to the enhancement of the Conservation Area and no adverse impact on the significance of nearby listed buildings.
- 3.19. In summary, the development that is alleged by the EN to constitute a breach of planning control, would, with the replacement of the temporary screen by the proposed ornamental screen, comply with Local Plan Policies D1 and D2 and should therefore be permitted.

Ground (g) – that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed

- 3.20. In the event that the Inspector is not persuaded by the ground (a) appeal, this ground (g) appeal is advanced.
- 3.21. The EN states that within a period of one month from the date of notice (11 February 2025) the Appellant is required to *“1. Completely remove the 4x Air Source Heat Pumps; 2. Remove acoustic enclosure; and 3. Make good any damage caused as a result of the above works.”*
- 3.22. The specified actions cannot reasonably be completed within the specified timeframe of one month for the reasons set out below.
- 3.23. Without the ASHPs in question, the Hotel would be unable to meet its hot water needs and would be unable to continue operating. The temporary loss of an operating hotel and 24 jobs in close proximity to a major national transport hub would be of considerable detriment to the local economy. As such, the EN can only be complied with (without interrupting the operations of the hotel) once an alternative location for the ASHPs is agreed.
- 3.24. The Appellant has submitted a planning application to relocate the units to the rear courtyard, but at the time of this Appeal, the application remains live and LB Camden has not indicated how it intends to determine the application.
- 3.25. Even if LB Camden were to approve the application in the near future, this would not leave enough time to complete the programme of works required to relocate the units before 26 April 2025 (one month after the effective date) as required by the EN.

- 3.26. The Appellant's construction management consultant has advised that, following any time required to secure planning permission for an alternative location, the programme of works required to relocate the ASHPs would include the following:

Duration	Description of Works
+ 2 Weeks	Lay all new pipework to new connection place and associated procurement
+ 6 Weeks	Disconnect two units, crane and move two units to new position including possible road closure on Woburn Walk
+ 1 Week	Connect two units and put them into commission
+ 9 Weeks	Repeat the above steps for the other two units
~ 18 Weeks	Total duration of works

- 3.27. In the event that the Inspector decides against the ground (a) appeal, we ask that the Inspector extend the compliance date on the EN to allow for a reasonable amount of time to (1) agree on a suitable alternative location for the ASHPs and (2) to carry out the works required for their relocation – six months would be reasonable.

4. Conclusion

- 4.1. This Notice of Appeal outlines the Appellant's appeal case against the enforcement notice EN24/0526 issued by LB Camden Council on 11th February 2025, and which, absent this appeal, would have come into effect on 26th March 2025.
- 4.2. It alleges that ASHP units and an acoustic enclosure were installed on the flat roof of the single storey substation located adjacent to the Hotel on the Woburn walk without planning permission.
- 4.3. The EN is appealed, first on ground (a), and, without prejudice to this, second on ground (g).

Appendix 1 – Architectural Drawings

Appendix 2 – Design and Access Statement

Appendix 3 – Heritage Statement

Appendix 4 – Technical Note

Appendix 5 – Tapeccrown v First Secretary of State [2007] EWCA 1744]

Appendix 6 – Bhandal v Secretary of State for Housing, Communities and Local Government [2020] EWHC 2724

Appendix 7 - Ahmed v SoSCLG & LB Hackney Council [2014] EWCA Civ 566

