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**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

**SECTION 78 & 174**

**PLANNING & ENFORCEMENT APPEALS**

**FINAL COMMENTS**

*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*

Appeal Refs:

APP/X5210/D/25/3359338 &

APP/X5210/C/25/335933

1. Final comments on Council's Statement

- 1.1 These are the appellant's final comments following receipt of the Council's appeal statement dated 15<sup>th</sup> April 2025 and third party comments.
- 1.2 The Council's statement consists of only comments on the appellant's grounds of appeal statement which were submitted along with a copy of the original officer's report.
- 1.3 Within paragraph 3.4 of the Council's statement the officer states "...unless there is a demonstrated and justified need" [for air conditioning]. The appellant during the planning application had provided extensive rationale for this requirement with professional reports and so in fact the appellant had provided all the justification for this.
- 1.4 Within paragraph 3.5 of the Council's statement the officer states that *"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."* This statement seemingly ignores the response provided by L2 Energy Consulting dated 19<sup>th</sup> December 2024 within which comments upon each point set out within the cooling hierarchy and concludes *"As it can be seen above, as part of the refurbishment works much of the cooling hierarchy has been introduced within the existing building where practical."* Indeed it is notable that nowhere in the Council's statement is reference made to this report and that the officer has chosen not to reconsult the Council's Sustainability Officer in relation to this report.
- 1.5 Within paragraph 3.6 the officer states *"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."* Such a statement by the officer is not supported by any evidence. The appellant has also installed an air source heat pump and made the dwelling as energy efficient as possible further reducing energy consumption in addition to the solar panels.
- 1.6 Within paragraph 3.7 the officer states that *"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."* The appellant, as part of this appeal, as shown within the additional report from L2 Energy Consulting has clearly set out why ceiling fans cannot be installed in the property (due to low height ceiling and health and safety issues) and as such has appropriately considered ceiling fans as is required by TM59:2017.
- 1.6 In relation to paragraph 3.8, solar shading on the rear extension would have little if any impact on reducing overheating to the whole property. Also the orientation of the dwelling and the large trees located on Adelaide Road already provide existing shading, yet the property still overheats.

- 1.7 With regard to paragraphs 3.9 to 3.11 the matter of Mechanical Ventilation with Heat Recovery (MVHR) has been adequately dealt with by the additional report by L2 Energy Consulting.
- 1.8 Within paragraph 3.12 the officer states *“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”*. Such a statement by the officer is surprising as it is well established in planning law that the personal circumstances of an applicant can amount to a material consideration as part of a planning application or appeal which is to be weighed into the decision. The appellant confirms that he requires prescription medication from February to September, and suffers most severely during the hottest periods. Indeed Camden recently granted planning permission for air conditioning units at 19 Hawtrey Road, NW3 3SS (which is located within the same Chalcots Estate as the appeal site) on the basis of the medical condition of that applicant. A copy of the decision notice and letter from that applicant is shown in Appendix 1. As part of this application no overheating and energy assessment was submitted as shown on the decision notice.
- 1.9 In relation to paragraph 3.13, the appellant is of the view that he has clearly provided sufficient justification for the need for the three air conditioning units and as such the appeal should be allowed.
- 1.10 With regard to the officer’s comments on the ground (g) appeal, the compliance period on an enforcement notice must be reasonable, particularly given the criminal sanction if it is not complied with. As such, given the constraints of the site and the need to employ an adequately licenced person to undertake the works a compliance period of 3 months would be reasonable and justifiable in this instance.

## 2. Comments on proposed conditions

- 2.1 The Council have put forward a number of conditions they would like attached to any planning permission granted. The appellant is willing to accept conditions, however the conditions must meet the 6 tests as set out within the National Planning Practice Guidance (NPPG). The appellant’s comment on each condition are set out below:-

Condition 2 – Acceptable

Condition 3 - Not acceptable. The development has already taken place and as such there is no ‘new’ development as such. The condition is also too vague and imprecise given that the development is for the retention of air conditioning units.

Condition 4 – Acceptable

Condition 5 - Acceptable

Condition 6 – Not acceptable, the condition is too vague and imprecise and does not state by which means the information requested is to be submitted to the Council and by when. Such a condition as worded is also not enforceable.

3. Comments on third party representations

- 3.1 It noted that there have been two letters of support submitted to the Planning Inspectorate as part of the appeal process and it should be noted that there were a total of four letters of support submitted by local residents including the appellant's direct neighbours as part of the original planning application.
- 3.2 The objection received from Michael Hatchwell should be put into context. Mr Hatchwell is indeed the former Director of Chalcot Estate Limited, however he was voted out of this position by the residents on 14<sup>th</sup> August 2024 following their dissatisfaction with the performance of the Chalcot Estate Limited and its failure to properly manage the estate and the communal areas.
- 3.3 Whilst the objection from this third party is lengthy, all of it relates to matters which are entirely outside of and have no bearing on the determination of this appeal. The objection, other than stating that planning permission should not be granted, does not raise any specific planning related objection or alleged non conformity with any of the Council's relevant local plan policies. Accordingly this objection should be given no weight in the determination of this appeal.