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19th May 2025

Dear Sir/Madam,

Appellant's Rebuttal to LB Camden's Final Statement of Case

Appeal Site: 31 Elsworthy Road, NW3 3BT

Appeal Reference: APP/X5210/W/25/3363132

LPA Reference: 2024/3908/P

Appellant: Valouran

Thank you for your letter dated 17th of April 2025, enclosing the Camden Council's Statement of Case relating to the above appeal. This rebuttal responds to the Council's Statement. It is the Appellant's view that that the Council's position is;

- Fails to properly consider thermal modelling evidence;
- Incorrectly dismisses the updated modelling as invalid.

  Inconsistent with precedent and planning practice;

We respectfully assert that:

- The condition fails to meet the NPPF's six tests for planning conditions (notably necessity and reasonableness);
- The revised thermal modelling and updated floor plan is a necessary, correcting the modelling to align with the consented scheme and updating it to reflect further detailed design. The revisions do not alter the underlying fact that one or more rooms within the proposed scheme qualify for active cooling;

- Camden's distinction between "habitable" and "non-essential" spaces is unfounded and unsupported by the relevant policies;
- The proposed approach is inconsistent with precedent decisions, including that at 2 Elsworthy Terrace, where the Council seemingly considered a utility room to be both 'habitable' and 'essential' despite it not being defined as such in the London Plan (a definition they seek to rely on in para 6.26);
- The appellant has demonstrated full engagement with the cooling hierarchy, contrary to Camden's claims.

These points are extrapolated below.

- **Condition 6 fails the condition tests**

Condition 6 seeks to prevent active cooling by ASHPs or other mechanical means unless explicitly limited in function.

a. Necessity

Camden argues the condition is necessary to prevent emissions and enforce the cooling hierarchy. However:

- The Thermal Modelling & Overheating Analysis demonstrates that passive measures and mechanical ventilation alone cannot prevent overheating in several rooms, namely a study/homework room at basement level (which was previously labelled as a gym), bedroom 2 at first floor and bedroom 5 at second floor. The Council's Statement of Case repeatedly refers to the applicant seeking active cooling in the swimming pool area but this is incorrect. It is only (and has only ever been) the study/homework room that requires active cooling at basement level.
- The rooms exceed CIBSE TM59 overheating thresholds, creating comfort and usability issues.
- Camden adopted policies are clear that where overheating is demonstrated after following the cooling hierarchy, then active cooling is appropriate regardless of room designation.

b. Reasonableness

Condition 6 imposes an unusual restriction on the use of mechanical systems even where thermal assessments prove they are required. The approach is punitive and goes beyond policy intent.

- **Updated thermal modelling is appropriate and necessary**

Rev C of the Thermal Modelling & Overheating Analysis reflects minor refinements being:

- The original Thermal Modelling & Overheating Analysis incorrectly assumed that all of the existing building's windows were to be replaced. In fact, more of the building's existing windows are to be retained as part the proposed scheme. The Thermal Modelling & Overheating Analysis contains updated dynamic simulation to reflect this

correction. Paragraph 6.25 of the Council's Statement of Case incorrectly states that more 'new windows' are being proposed under Rev C.
- The gym has been re-labelled a study/homework room;
- The updating of the Thermal Modelling & Overheating Analysis does not change the underlying conclusion of the analysis, which is that one or more rooms require active cooling.

The updating of the Thermal Modelling & Overheating Analysis does not alter which planning policies this appeal will be determined against. This is standard design progression, not a fundamental alteration. The floor area, use, and external form remain consistent with the approved scheme. All that has changed is the correct modelling of retained existing windows and the re-labelling of one room and therefore the updated floor plan and updated Thermal Modelling & Overheating Analysis are considered to be a technical refinement that supports the original application. The updated documents do not propose new development but merely provide more accurate and relevant data.

The Council's position, that post decision modelling is invalid, is considered flawed as it results in assessing proposals (or in this case post consent details regarding a specific condition) against outdated and less precise modelling. It is the Appellants case that the discharge of any post consent condition should be based on current and accurate information which arises as the development progresses, which is particularly the case for sustainability-based conditions which are likely to rely on modelling that can be impacted by detailed design.

- **The use of active cooling is policy compliant and justified**

a. Policy CC1 & CC2: Energy Efficiency and Adaptation

Camden claims the proposal contradicts CC1 (mitigation) and CC2 (adaptation). However:

- The cooling proposed is in direct response to overheating risk verified through the Thermal Modelling & Overheating Analysis;
- The systems proposed (ASHPs) are low-carbon, modern solutions, consistent with the "Be Lean – Be Clean – Be Green" hierarchy;
- The appellant has fully engaged with the cooling hierarchy as is clearly evidenced throughout the Thermal Modelling & Overheating Analysis. The Council has not demonstrated otherwise.

b. Cooling Hierarchy Addressed in full

Camden argues that passive options have not been fully explored (para 6.29). This is inaccurate. The model and proposals already include insulation to all heat generating processes including insulation to the internal partitions that contain elevated temperatures namely plant rooms, sauna, steam and swimming pool. All heating and domestic hot water pipework is to be insulated with Phenolic foam above the requirements under the building regulations. Despite these, overheating is still present.

Camden states (para 6.30) that other alternative options, including mechanical ventilation with heat recovery and air-tempering, have not been explored or addressed. This is inaccurate.

Mechanical Ventilation is included in the basement and all measures have been explored on the upper levels. Despite this, overheating is still present. The inclusion of blinds restricts the use of openable windows and therefore the cooling effect. Internal blinds can reflect some of the internal gains if they are constructed of particular materials and colour but are limited in their effectiveness. Openable windows have a larger effect than internal blinds. This is the reason Part O of the building regulations require their use is excluded in the calculations for overheating.

The rooms identified cannot be reliably cooled without some mechanical support, even with these measures applied.

Camden states (para 6.31) that sufficient information on the cooling requirement and details of the efficiency of the system have not been provided, and therefore it is not possible to determine whether the proposed ASHP with cooling, is energy efficient. The Appellant refutes this. The ASHP was submitted as part of the application, including an acoustic report. Further technical details are shown below. The unit has been chosen as one of the most efficiently available. The unit selection is a “heat recovery” unit. The heat absorbed from the rooms requiring cooling can be directed into the pool and domestic hot water providing Seasonal Energy Efficiency Ratios (SEERs) up to an impressive 6.3. Typical SEERs are in the range of 2.5-3. During times of equal load, the compressor on the ASHP is not required and the heat is simply moved from room to room within the property creating an extremely efficient system.

2-1 Technical Specifications				REMQ5U	REYQ8U	REYQ10U	REYQ12U	REYQ14U	REYQ16U	REYQ18U	REYQ20U
Recommended combination				-	4 x FXFQ50A VEB	4 x FXFQ63A VEB	6 x FXFQ50A VEB	1 x FXFQ50A VEB + 5 x FXFQ63A VEB	4 x FXFQ63A VEB + 2 x FXFQ80A VEB	3 x FXFQ50A VEB + 5 x FXFQ63A VEB	2 x FXFQ50A VEB + 6 x FXFQ63A VEB
Recommended combination 2				-	4 x FXSQ50A 2VEB	4 x FXSQ63A 2VEB	6 x FXSQ50A 2VEB	1 x FXSQ50A 2VEB + 5 x FXSQ63A 2VEB	4 x FXSQ63A 2VEB + 2 x FXSQ80A 2VEB	3 x FXSQ50A 2VEB + 5 x FXSQ63A 2VEB	2 x FXSQ50A 2VEB + 6 x FXSQ63A 2VEB
Recommended combination 3				-	4 x FXMQ50P 7VEB	4 x FXMQ63P 7VEB	6 x FXMQ50P 7VEB	1 x FXMQ50P 7VEB + 5 x FXMQ63P 7VEB	4 x FXMQ63P 7VEB + 2 x FXMQ80P 7VEB	3 x FXMQ50P 7VEB + 5 x FXMQ63P 7VEB	2 x FXMQ50P 7VEB + 6 x FXMQ63P 7VEB
Cooling capacity	Prated,c		kW	14.0 (1)	22.4 (1)	28.0 (1)	33.5 (1)	40.0 (1)	45.0 (1)	50.4 (1)	52.0 (1)
Heating capacity	Prated,h		kW	-	13.7	16.0	18.4	20.6	23.2	27.9	31.0
	Max.	6°CWB	kW	16.0 (2)	25.0 (2)	31.5 (2)	37.5 (2)	45.0 (2)	50.0 (2)	56.5 (2)	63.0 (2)
SEER				-	7.2	6.7	6.5		6.2	6.3	6.2
SEER recommended combination 2				-	6.8		6.2	6.6	6.2	6.4	6.3
SEER recommended combination 3				-	7.2	6.7	6.6		6.1	6.4	6.3

- **Incorrectly applying a test of ‘essential’**

The Council's view is that the gym (now re-labelled a study/homework room) are “non-essential” and thus undeserving of cooling is unsupported by planning policy, which does not make cooling rights contingent on subjective interpretations of room hierarchy. It also fails to consider that the overheating risk exists regardless of room designations and should be addressed objectively.

The Council have referred to the emerging policy CC8 from the Draft Local Plan, which they

note has limited weight at this stage. This policy is not referred to in the reason for condition 6, and so it is not clear why the Council has introduced it at this stage. Notwithstanding this, regard has been given to the policy for the purposes of this appeal. In para 6.22 of the Council's statement, a select quote from the policy is provided, however it is noted that the full paragraph referred to reads as;

> *4. only permit applications for new and/or additional active cooling systems or units where all other feasible measures in the cooling hierarchy have been integrated into the development and there is still a clear need for active cooling demonstrated by dynamic thermal modelling. Where applications for active cooling are considered acceptable, the energy used to operate the active cooling system should be offset through the installation of solar PV and greening, to help cool the local environment, where feasible;*

The emerging policy sets out the same approach to active cooling as the existing policy, namely that it is only acceptable where the cooling hierarchy is followed and dynamic thermal modelling demonstrates its need. The selective use of part of this policy is troubling and appears to be an attempt to 'guide' the Inspector. The full policy should be read in context. Furthermore, the policy does not differentiate between 'essential' and 'non-essential' rooms or limit active cooling to a certain type of room.

- **Precedent at 2 Elsworthy Terrace supports the appeal**

Camden attempts to distinguish this precedent by arguing that active cooling there served "core habitable spaces." However, this is considered a flawed approach as both schemes were supported by thermal modelling, showing clear instances of overheating. The principle established at 2 Elsworthy Terrace is that active cooling is justified where passive measures are insufficient, regardless of room designation, which is presumably why they permitted active cooling in a utility room. The same approach that should be applied in this case. It is therefore the Appellant's case that the Council's selective interpretation of precedent highlights a lack of consistency in decision-making.

- **Proposed Alternative Condition**

While it is maintained that Condition 6 should be removed in its current form, the appellant is open to a revised condition, as set out in the Appellant's Statement of Case. Such a condition would be policy aligned, and therefore reasonable.

It is noted that the condition put forth by the Council is unreasonable given that it requires further details of mitigation against active cooling, including the consideration of natural passive measures. It is the Appellant's case that this has already been undertaken and provided to the Council during the application process through the Overheating Assessment and Dynamic Thermal Modelling. The reason for the condition is '*in order to minimise energy consumption and follow the energy and cooling hierarchies'*, which is considered to misinterpret the point of this appeal, which is that the proposal, through the submitted documents and details, has demonstrated, without doubt, that the scheme has followed the

hierarchies and ensured that energy consumption is minimised, whilst ensuring that all rooms within the dwelling will not exceed the CIBSE TM59 overheating thresholds.

Conclusion

Given all the above, it is the Appellants position that the Council has failed to appropriately justify the need or reasonableness of proposed Condition 6. It remains unnecessary given modelling evidence and fails the test of reasonableness and consistency. It is therefore respectfully requested that condition 6 is removed.

Kind regards

Lauren Westley

Principal Planner

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