
Appeal Decision

Site visit made on 21 March 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 June 2017

Appeal Ref: APP/N5090/C/16/3161013

Land at 11 Glengall Road, Edgware HA8 8TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Yossi Mozes against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 12 September 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the siting of four air conditioning units to the rear of the property.
 - The requirements of the notice are to permanently remove the air conditioning units and all fixtures and fittings from the site.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected

Procedural Matters

1. The breach of planning control as alleged in the notice is, without planning permission, the siting of four air conditioning units to the rear of the property. I carried out an unaccompanied site visit on 21 March 2017, as part of which I was able to view the property from the parking area to the rear of the parade of shops of which the appeal premises forms a part.
 2. From that vantage point, I was only able to see two air conditioning units at the rear of the appeal premises, both mounted vertically just below the parapet of the wall that runs at first floor level and which delineates the pedestrian access to the residential units at the upper levels of the terrace. There were other structures mounted on that wall and on the flat roof of a single-storey extension at the rear. However, it was not obvious to me that these structures were air conditioning units or that they were associated with the appeal premises.
 3. My own observation on site is consistent with the comment made by the appellant in his Grounds of Appeal, in which it is categorically stated that there are only two air conditioning units installed at the rear of the premises that he owns. The appellant does refer to other air conditioning units to the neighbouring property, but confirms that these do not lie within his own property and that he has no control or responsibility for them.
 4. In view of the above, at my request the case officer wrote to the Council on 28 March 2017 requesting clarification on the breach of planning control alleged in
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the notice. No response was received to that letter, and therefore the case officer wrote to the Council again on 10 April 2017. A further reminder was sent on 27 April 2017, but no response was received to that communication.

5. The case officer wrote again on 23 May 2017, and on this occasion the Council did reply and confirmed that there are only two air conditioning units located at the rear of the property. The Council therefore accepts that the notice should be corrected to reflect the siting of two air conditioning units at the rear of the property.
6. The appellant did not respond to the case officer's letter dated 23 May 2017. However, given that the appellant had previously stated that there are only two air conditioning units installed at the rear of the premises, I am satisfied that I can correct the notice without causing injustice. I shall correct the notice to refer to the siting of two air conditioning units to the rear of the property.

The appeal on ground (a) and the deemed planning application

7. The ground of appeal is 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. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the air conditioning units on the living conditions of the occupiers of neighbouring residential properties, specifically in relation to noise disturbance.
8. The appeal property is a bakery and is one of a number of retail premises within a parade of shops on the north side of Glengall Road. These retail units are contained within a three storey building, with residential accommodation on the upper two floors. To the rear of the building is an area for car parking. The air conditioning units subject to the enforcement notice are located just below the parapet of a wall that forms the rear elevation of the retail units and which faces onto the parking area.
9. The residential flats are set back from this parapet, with a walkway to provide access to the flats between the parapet wall and the rear elevation of residential properties. As well as the doors to the individual flats, there are a number of windows at both first and second floor levels in this rear elevation. Although I have not been provided with an internal layout of these flats, it is evident that some of these windows serve habitable rooms. A number of the flats have small gardens located at ground floor level, where they adjoin the parking area.
10. Neither the appellant nor the Council have provided any technical evidence in relation to noise generated by the air conditioning units. The only evidence before me in terms of the effect of the air conditioning units on the living conditions of the occupiers of neighbouring residential properties is a representation from the occupiers of one of the flats. These occupiers explain in some detail the effect that noise from the air conditioning units has had on the enjoyment of their property, indicating that it is necessary for them to keep their windows shut at all times in order to reduce the noise levels within their property. The occupiers also explain that they feel unable to use their garden area and are no longer able to enjoy sitting out on the patio at the front of their home due to the noise from the air conditioning units.

11. I am mindful that the occupiers refer to four air conditioning units, which appears to have been taken from the notification of the appeal from the Council but which has subsequently confirmed to be inaccurate. Reference is also made in the representation to noise from other sources. Nevertheless, it is evident from this representation that the air conditioning units are the primary cause of the noise disturbance experienced by these occupiers. It is also evident that the noise generated by the air conditioning units is having a significantly harmful effect on the living conditions of these occupiers and the enjoyment of their home. Having regard to the detail in which these effects are described by the occupiers, I afford their concerns substantial weight.
12. I conclude that the air two conditioning units subject to the enforcement notice unacceptably harm the living conditions of the occupiers of neighbouring residential properties, specifically in relation to noise disturbance. I therefore conclude that this development is contrary to Policy DM04 of the Barnet Development Management Policies Document which, amongst other things, indicates that proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted.

Other Matters

13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the air conditioning units fail to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
14. The appellant asserts that the air conditioning units are vital for the continuance of the use of the ground floor of the property as a bakery. However, no technical evidence has been provided to substantiate that assertion or to explain why air conditioning equipment is necessary for the continued operation of the bakery, if indeed that is the case. I therefore attach only limited weight to this matter.
15. The appellant points out that noise disturbance lies within the jurisdiction of the Council's Environmental Health Service. However, the role of Environmental Health Services primarily relates to statutory noise nuisance under the Environmental Protection Act 1990, as amended by the Environment Act 1995. Noise disturbance that falls outside the definition of a statutory noise nuisance is capable of being a material consideration under the Planning Acts. Indeed, I note that the development plan for this area includes a policy that specifically includes reference to development that is likely to generate unacceptable noise levels close to noise sensitive uses. Residential properties, such as the flats neighbouring the appeal property, qualify as noise sensitive uses in this context.
16. Having regard to the above, I consider that there are no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Accordingly, the appeal on ground (a) fails.

The appeal on ground (g)

17. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is two months.
18. The essence of the appellant's case on this ground of appeal is that the air conditioning units are vital for the continuance of the use of the ground floor of the property as a bakery and that more than two months would be required to arrange replacement facilities. However, as indicated above, I have been provided with no evidence to show that the air conditioning units are necessary for the bakery to continue operating. Moreover, even if that was the case, I have been provided with no detailed explanation as to why two months would not be sufficient to arrange replacement facilities. The appellant has therefore not made out his case on this ground of appeal.
19. Accordingly, the appeal on ground (g) fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the enforcement notice be corrected by deleting the words "four air conditioning units" in paragraph 3 of the notice and replacing them with the words "two air conditioning units". Subject to that correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR