



Appeal Decision

Hearing Held on 19 November 2019

Site visit made on 19 November 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/X5990/W/19/3226010

Block 6, 79 Ashley Gardens, Thirleby Road, London SW1P 1HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Yaser Bin Mahfouz against the decision of City of Westminster Council.
 - The application Ref 18/01433/FULL, dated 16 February 2018, was refused by notice dated 26 February 2019.
 - The development proposed is described as the "installation of an air condenser unit located on the central section of the roof within a roof pocket of the enclosed communal stairwell with associated service runs adjacent to existing pipework on the external face of the internal lightwell".
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Decision

1. The appeal is allowed and planning permission is granted for installation of an air condenser unit located on the central section of the roof within a roof pocket of the enclosed communal stairwell with associated service runs adjacent to existing pipework on the external face of the internal lightwell at Block 6, 79 Ashley Gardens, Thirleby Road, London SW1P 1HP in accordance with the terms of the application, Ref 18/01433/FULL, dated 16 February 2018, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. This appeal relates to the installation of a single air condenser unit, reference is however made in plans and reports submitted in support of the appeal to a second unit within the same roof pocket to serve a neighbouring flat. Consent for the second unit was sought by a different appellant and is subject of a separate decision.
3. A number of items of late evidence were submitted at the hearing including an unsigned unilateral undertaking. Since the hearing was closed a signed copy of the, otherwise unchanged, unilateral undertaking has been submitted by the appellant.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

5. The appeal relates to part of the stairwell at the roof level of the appeal property. The stairwell provides access to a number of flats in addition to roof gardens. Immediately adjacent to the stairwell is a lightwell serving a number of habitable and non-habitable room windows below. The appeal proposal would result in the creation of a void in the roof of the stairwell and the installation of an air condenser unit with associated services and pipework to serve one of the flats in the block.
6. Policy ENV7 of the City of Westminster Unitary Development Plan (2007) (the UDP) is relevant to the appeal proposal and requires that plant and machinery achieve set standards in relation to the existing noise levels. Policy ENV6 of the UDP indicates that where development adjoins other buildings or structures the applicant is required to demonstrate that as far as reasonably practicable development will be designed and operated to prevent transmission of audible noise or perceptible vibration through the fabric of the building to adjoining properties and not to permit development that would cause noise disturbance in tranquil areas.
7. I have been provided with detailed technical information by both the appellant and by interested parties. There is some dispute between the parties as to the correct background noise level and whether or not, in accordance with policy ENV7, the noise from the proposed development should not exceed 10 or 5 dB "below the minimum external background noise at the nearest noise sensitive properties".
8. I note the appellants comments regarding the differing requirements of BS4142 and Policy ENV7. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and therefore, I have referred to the "minimum external background noise level" as set out in Policy ENV7.
9. The CSG Acoustics report dated March 2018 details the minimum external background noise level at the nearest noise sensitive property, this is therefore most representative, of the information before me, of the specific requirements of policy ENV7. The noise levels are identified as being 39 dB during the day time and 37 dB during the night time, these are below the World Health Organisation (WHO) guideline levels.
10. Therefore, under the provisions of Policy ENV7 a 5dB reduction can be applied, if it is demonstrated that the application of this slightly reduced criteria will provide sufficient protection to noise sensitive properties. On the basis of the evidence before me I am satisfied that a 5dB reduction is appropriate.
11. The Sustainable Acoustics report and subsequent addendums, submitted in support of the application, assessed the two air condenser units as producing a maximum combined noise level of 30dB at the nearest sensitive property.
12. Therefore, I find that based on the evidence before me, the proposed development would achieve the specified noise levels at the nearest noise sensitive properties required by Policy ENV7 of the UDP.
13. Turning to Policy ENV6 of the UDP, I note that the submitted drawings show the use of anti-vibration fittings and while local residents have raised concerns that these may not be sufficient to prevent the transmission of vibrations from

the unit through the structure of the building, in particular to neighbouring bedrooms, I have no substantive evidence before me that the anti-vibration fittings would not be adequate. Furthermore, while I note the concerns of neighbours with regards the transmission of noise and vibrations through the service runs and pipework, I have no substantive evidence before me to show that this would occur and impact on the living conditions of the occupiers of neighbouring properties.

14. I saw at the site visit that the resident's roof terrace gardens are tranquil areas and are therefore protected from development that would cause noise disturbance by Policy ENV6. However, evidence submitted by the appellant demonstrates that the noise produced by the proposed unit would be substantially below the background noise levels even in close proximity to the unit.
15. As such, while residents may be able to distinguish the noise of the operation of the units from the general background noise generated, for example, by distant traffic noises, I find that the proposed development would not cause noise disturbance to the users of the roof terrace gardens and the proposed development is not therefore contrary to Policy ENV6 of the UDP.
16. For the reasons detailed above I find that the proposed development is not contrary to Policies ENV6 and ENV7 of the UDP and Policies S29 and S32 of the Westminster City Plan (2016) that seek to protect and improve the residential environment from, amongst other impacts, noise and vibration.

Other Matters

17. I note that planning permission has previously been granted for the provision of air conditioning units within a specially designed roof top enclosure, indeed a number of residents suggest that this is preferable to that proposed here. Be that as it may I have judged the appeal scheme on its own merits. Furthermore, the appellant has submitted a signed Unilateral Undertaking, the effect of which is to ensure that only one of the air conditioning plant schemes can be brought forward.
18. The Unilateral Undertaking is necessary to avoid potential harm to the living conditions of residents which could arise from both schemes and accords with the tests set out in paragraph 56 of the Framework.
19. A number of residents have questioned the need for the proposed development given both the existing planning permission for air conditioning units in a purpose built enclosure in a different location on the roof and the existing passive ventilation design features of the flats. I have nonetheless determined the appeal on its own planning merits.
20. The site is situated within a Conservation Area (CA). I have a statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of the CA. It is not disputed between the parties that the development would have no impact on the CA, and on the basis of the evidence before me I see no reason to come to a different view.

Conditions

21. I have considered the conditions proposed by the Council in the light of guidance in Planning Practice Guidance (PPG). In addition to the standard conditions which limit the lifespan of the planning permission and requires the submission of reserved matters I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
22. Because of the proximity of the location of the air condenser unit and residential units I have included the suggested conditions relating to hours of construction working. I have also included conditions relating to the details of service pipe runs, vibration and the use of anti-vibration pads and post installation noise survey work to protect the living conditions of the occupiers of the neighbouring properties. I have included a condition relating to the use of materials to ensure that the roof pocket is in keeping with the appearance of the existing building. I have amended condition no.9 to remove reference to earlier planning permissions because the submitted Unilateral Undertaking means that should this consent be implemented, the earlier consents cannot be implemented.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

Mark Brooker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers 700; 701; 702; 800; 820; 821; 822; 850; 870; 871; 872; and, 873
- 3) Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall be carried out only:
 - o between 08.00 and 18.00 Monday to Friday;
 - o between 08.00 and 13.00 on Saturday; and
 - o not at all on Sundays, bank holidays and public holidays.Piling, excavation and demolition work shall be carried out only:
 - o between 08.00 and 18.00 Monday to Friday; and
 - o not at all on Saturdays, Sundays, bank holidays and public holidays.Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety).
- 4) All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the approved drawings or are required by conditions to this permission.

- 5) Prior to the installation of the pipe work, detailed drawings at 1:50 or 1:20 showing the pipe runs in the lightwell must be submitted to and approved in writing by the Local Planning Authority. The pipe work shall be carried out in accordance with the approved drawings.
- 6) The Fujitsu unit hereby permitted shall only be operated in setback modes between the hours of 23:00-07:00 when in operation.
- 7) No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.
- 8) The anti-vibration mounts as specified in the Acoustic Report prepared by Sustainable Acoustics dated September 2018, must be installed prior to the operation of the condenser unit hereby approved. The anti-vibration mounts must remain in place for as long as the condenser unit remains operational.
- 9) The plant/ machinery hereby approved must not be operated (other than to carry out the survey required by this condition) until a post-commissioning noise survey has been carried out and sent to the Local Planning Authority and they have approved the details of the survey in writing. The post-commissioning noise survey must demonstrate that the plant/ machinery complies with the noise criteria set out in Conditions 10 and 11 of this permission. Should this report suggest that any additional mitigation is required; the details of this should be provided to the Local Planning Authority for approval prior to its installation and the approved measures shall be implemented in full.
- 10) (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 5 dB below the minimum external background noise, at a point 1 metre outside the internal lightwell windows of Block 6, 71-83 Ashley Gardens, unless and until a fixed maximum noise level is approved by the Local Planning Authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside the internal lightwell windows of Block 6, 71-83 Ashley Gardens, unless and until a fixed maximum noise level is approved by the Local Planning Authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, an application may be made in writing to the Local Planning Authority for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the Local Planning Authority. The noise report must include:

(a) A schedule of all plant and equipment that formed part of this application;

(b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;

(c) Manufacturer specifications of sound emissions in octave or third octave detail;

(d) The location of most affected noise sensitive receptor location and the most affected window of it;

(e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;

(f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;

(g) The lowest existing L A90, 15 mins measurement recorded under (f) above;

(h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;

(i) The proposed maximum noise level to be emitted by the plant and equipment.

- 11) (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, with the exception of the internal lightwell windows at Block 6, 71-83 Ashley Gardens unless and until a fixed maximum noise level is approved by the Local Planning Authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any

residential and other noise sensitive property, with the exception of the internal lightwell windows at Block 6, 71-83 Ashley Gardens unless and until a fixed maximum noise level is approved by the Local Planning Authority. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

(3) Following installation of the plant and equipment, an application may be made in writing to the Local Planning Authority for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the Local Planning Authority. The noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

End of Schedule of Conditions

APPEARANCES

FOR THE APPELLANT:

Tracy Rust
Christopher Heal
Jessica Klein

TJR Planning
Sustainable Acoustics
Palladian London

FOR THE LOCAL PLANNING AUTHORITY:

Louise Francis

Area Planning Officer

INTERESTED PERSONS:

Andrew Byass

of Counsel

Kyriakos Papanagiotou

KP Acoustics

Simon Franses

Local resident

James Ramsey

Local resident

Cllr S Short

Westminster City Council

Joseph Bachman

Local resident

Lindsey McCraig

Local resident

Lora-Ann Chiginsky

Local resident

Peter Roberts

Local resident and Cathedral Area Residents Association

DOCUMENTS SUBMITTED AT THE HEARING

- 1) Appeal Hearing Statement and covering letter – Local residents Simon Franses, James Ramsey, Lindsey McCraig
- 2) Sustainable Acoustics letter dated 14 November 2019
- 3) Unilateral Undertaking (unsigned and undated)
- 4) The Governing Body of Langley Park School for Girls v the London Borough of Bromley [2009] EWHC Civ 734
- 5) Plans of roof terraces and 'alternative scheme'