



Appeal Decision

Site visit made on 24 February 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal Ref: APP/X5990/X/19/3237594 7 Montpelier Terrace, London SW7 1JP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs M Bannerjee against the decision of City of Westminster Council.
 - The application Ref 18/09946/CLEUD, dated 16 November 2018, was refused by notice dated 25 March 2019.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is:
An existing air conditioning unit positioned on the rear wall of the building.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my site visit I saw two air conditioning units on the rear elevation of the property. The unit which is the subject of this appeal is the unit to the right when looking at the rear elevation.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. The appellant relies on two independent grounds against the Council's decision. First, that the air conditioning unit is not 'development', and second, that the air conditioning unit has been in situ for a period of in excess of 4 years i.e. that it is 'immune' from enforcement action.

Whether 'Development'

5. Section 55(2)(a)(ii) of the above Act states that the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building, shall not be taken for the purposes of this Act to involve the development of land. Based on this clause, the appellant considers the air conditioning unit is not development.

6. The unit is fixed to the rear wall of the building below its valley roof and cannot be seen from the street. The appellant states they cannot view the rear wall from any part of their property. However, as was obvious at my site visit, the unit is plainly visible from the windows of numerous dwellings at the rear of the property, including Eresby House, which is a multi-storey block of flats.
7. In my judgement, the air conditioning unit materially alters the external appearance of the appeal building in relation to the building as a whole, when viewed from dwellings within Eresby House and other properties to the rear of the appeal site. In an urban context such as this, there is nothing unusual about these vantage points, which are normal views of the surrounding environment for the occupants of such dwellings. Given the number of vantage points in Eresby House from where the unit may be seen, I do not accept private views of the unit are limited, as is suggested by the appellant.
8. It is not the case that development does not materially alter the external appearance of a building if the development in question cannot be seen from the public highway or the appeal site itself. My attention has been drawn to a case in the London Borough of Camden which the appellant states they rely on. However, the scenario described in that case is an air conditioning unit fixed to a ceiling of a narrow passageway. There is no evidence which satisfies me that is a comparable scenario to the case before me.

Whether Immune

9. Section 171B of the above Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
10. Evidence indicates the air conditioning unit was installed on 9 June 2004 and was removed from the rear wall of the property on 8 November 2017 and placed on an adjoining flat roof. However, the appellant says it was removed temporarily and that they always intended to reinstall it. Evidence indicates the unit was reinstalled in October 2018.
11. As such, the unit was absent from the rear wall of the building for a period of over 10 months. In my judgement, this is a significant period of time and reinstallation of the unit, after this significant period, constituted a fresh building operation under section 55(1A) of the above Act. As such, the unit was not immune from enforcement action when the LDC was applied for in November 2018, notwithstanding that the unit may previously have been installed on the property for over four years.
12. The appellant refers to the unit as having been "in continuous use". But there is no evidence which satisfies me that when it was removed in November 2017 it remained subject to planning control, until it was reinstalled.

Other Matters

13. The appellant is dissatisfied with the Council's conduct. They claim the removal of the air conditioning unit was improperly sought and that it would be unfair for them to be penalised for faithfully responding to the enforcement threat by the Council. But these are not matters for me to consider within the scope of

an appeal under section 191 of the above Act where the facts of the case and relevant planning law must be considered, and not any planning merits.

14. The appellant considers it would be an abuse of power for the Council to now take enforcement action requiring the removal of the unit. But the refusal of an LDC does not constitute the taking of enforcement action, which is specifically defined in section 171A(2) of the above Act. In any case, whether enforcement action is taken is entirely a matter for the Council, taking into account the provision of section 172 of the above Act.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an existing air conditioning unit positioned on the rear wall of the building was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

L Perkins

INSPECTOR