



Appeal Decision

Site visit made on 27 September 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Appeal Ref: APP/N4720/C/21/3272756

Land at 33 Gledhow Avenue, Gledhow, Leeds, LS8 1LD

- 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 James Earl against an enforcement notice issued by Leeds City Council.
 - The enforcement notice, numbered 20/00986/UHD3, was issued on 11 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of two wall mounted external air source heat pumps to rear.
 - The requirements of the notice are:
 - Step 1. Remove the wall mounted external air source heat pumps, pipework and fixings from the exterior of the building.
 - Step 2. Make good all parts of the building which [*sic*] the units, pipework and fixings were attached in materials to match the original.
 - The period for compliance with the requirements is twelve weeks beginning with the day on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of two wall mounted external air source heat pumps to the rear of the dwelling on land at 33 Gledhow Avenue, Gledhow, Leeds, LS8 1LD referred to in the notice, subject to the following condition:
 - 1) Within six weeks of the date of this decision the white, external surfaces of the two wall mounted external air source heat pump units hereby permitted shall be painted black and, so long as they remain, the heat pump units shall be retained in that colour.

Procedural matters

2. The appellant and his agent attended the appeal site at the appointed time, but there was no representative from the Council. Although a notification had been sent to it, when the appellant's agent contacted the Council at my request, an officer said they could find no trace of that notification. The appellant owns, but does not occupy the appeal property, and the occupier was not at home and the side gate was locked. However, I was satisfied that I could undertake the inspection unaccompanied, as I could see all that I needed to from the public

highway. The Council has confirmed in writing that it is content for me to determine the appeal on that basis.

3. Since the appeals were lodged, the Government published its revised National Planning Policy Framework (the Framework) in July 2021. The parties have had an opportunity to comment on the implications of the changes during the appeal process.

Ground (c)

4. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged do not constitute a breach of planning control.
5. The appellant refers to Class G in Part 14 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015. Subject to limitations and conditions, this provides that the installation of air source heat pumps on domestic premises is permitted development (PD). However, paragraph G.2 states that this will not be PD if, among other things, the development would result in the presence of more than 1 air source heat pump on the same building or within the curtilage of the building.
6. There are 2 pumps on the building in this case. The appellant questions whether the matters alleged in the notice constitute a breach of planning control "to the extent alleged by the notice." However, as the notice alleges the installation of 2 heat pumps, for this reason alone, whether or not the other limitations and conditions would be met, the matters alleged cannot be PD. As no express planning permission has been granted, the matters constitute a breach of planning control and ground (c) cannot succeed.

Ground (a)/the deemed application for planning permission

Main Issue

7. The main issue is the effect of the development on the living conditions of the occupiers of No 62 Denton Avenue, in terms of visual impact.

Reasons

8. The host dwelling has been substantially extended, including a side and rear extension, finished in black painted timber and a black corrugated, pitched roof. The property's overall appearance and design is now quite different from that of the neighbouring dwellings. The air source heat pump compressor units (the pump units) are mounted on brackets, above head height on the rear elevation of the rearward projecting single-storey extension. They face the rear boundary of the neighbouring property to the north, No 62 Denton Avenue. The pump units are finished in white, with black grilles covering the fans. They each measure 0.51 cubic metres and have a somewhat industrial appearance. Though below the ridge height of the extension, parts of the units project above the pitch of the roof.
9. The rear garden of No 62 Denton Avenue is enclosed by a timber fence, approximately 1.8 metres high. However, the occupiers of that property say the actual boundary is marked by the low retaining wall, closer to the rear elevation of the appeal property's extension. This is consistent with a plan

submitted by the appellant (Drg No 1247-M001), which shows the rear elevation of the extension 1 metre from the boundary.

10. I see no reason to differ from the view expressed in Council's officer report that "although the two pump units are visible from public view, due to their size and the fact that they do not directly face the highway, it is considered that the proposal will not harm the character of the area or at least not to a degree that justifies this application being refused for their impact on the character of the area." However, notwithstanding the boundary fence; the setting back of the pump units from that fence; the siting of a substantial shed in the south-eastern corner of the garden of No 62 Denton Ave; and the significant separation between the pump units and the windows of that house, those units do have a somewhat overbearing impact on the occupiers of that house and garden. This is due to a combination of their, size, height, and positioning, relative to the pitch of the extension gable and their predominantly white colour. That contrasts markedly with the black finish of the extension and draws the eye.
11. The appellant urges me to have regard to a 'fall-back' position, namely the PD rights in relation to a single pump unit under Class G, outlined above. However, I attach no significant weight to that for the following reasons:
 - By virtue of paragraph G.2(e) of Class G, development is not permitted if any part of the air source heat pump would be installed within 1 metre of the boundary of the curtilage of the dwellinghouse. Whilst I was unable to gain access to the appeal property to check measurements, the occupier of No 62 Denton Avenue maintains that both heat pumps are within 1 metre of the curtilage boundary, as marked by the retaining wall. This contention appears consistent with the plan submitted by the appellant.
 - Paragraph G.3(b) and (c) together impose conditions that any air source heat pump shall, so far as practicable, be sited so as to minimise its effect on the external appearance of the building and the amenity of the area. In this regard, the appellant asserts that, because the unit would need to be sited close to the internal boiler, there are only two viable locations, namely the current position or the street side elevation of the property. As indicated, I was unable to gain access to the property itself. Nevertheless, even accepting that positioning a pump unit lower down the rear elevation would impede the rear access to the property, the evidence provided is insufficient to demonstrate that it would not be technically possible to site a unit on the western elevation of the extension, even if this necessitated some internal reconfiguration.
12. Saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006), adopted 19 July 2006 (the UDP) requires development to, among other things, seek to avoid problems of environmental intrusion and loss of amenity. Policy P10 of the Core Strategy (as amended by the Core Strategy Selective Review 2019), adopted November 2014, amendments adopted 11 September 2019 (the CS) says developments should contribute positively to placemaking, quality of life and wellbeing.
13. These policies are consistent with paragraph 130 of the Framework. Furthermore, the Leeds Householder Design Guide (April 2012) is adopted as a Supplementary Planning Document (SPD) and is a material consideration. Policy HDG2 of that SPD also says developments should protect the amenity of

neighbours. Among other things, it indicates proposals which harm the existing residential amenity of neighbours through overdominance, will be strongly resisted.

14. I have already found that the pump units have a somewhat overbearing impact on the occupiers of No 62 Denton Avenue, so there is some conflict with UDP Policy G5, CS Policy P10, SPD Policy HDG2 and the Framework. Against this, the appellant stresses the sustainability benefits of the low carbon energy this development facilitates. LP Policy GP5 also indicates that development proposals should promote energy conservation and the appellant draws further support from the following:

- the encouragement for micro-generation technology proposals in Policy Energy 2 of the Leeds Natural Resources and Waste Local Plan (2013), albeit that such proposals should be acceptable in terms of their impact on, among other things, visual amenity;
- the emission reduction targets set out in the Climate Change Act 2008;
- the Framework's support for the transition to a low carbon future and its recognition that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions;
- the Government's plans to ban the installation of gas boilers in new homes from 2025;
- the recommendation for the decarbonisation of the housing stock in the Committee on Climate Change's 2019 report 'UK Housing: Fit for the Future';
- the Council's declaration of a Climate Emergency in March 2019; and
- support for initiatives to increase the efficiency of energy use in homes set out in the Leeds City Council Building for Tomorrow Today - Sustainable Design and Construction SPD (2011).

15. Although, by reference to a recent Energy Performance Certificate, the occupier of No 62 Denton Avenue questions the benefit of the development in energy performance terms, the Council acknowledges, what it describes as the "moderate benefits" of a low carbon heat source. It is likely that the development will give rise to benefits in comparison to, for example, use of a gas boiler, but I would not diverge from the Council's assessment of those benefits as moderate, having regard to the scale of the development.

16. It is also clear that the benefits of the development must be weighed against the harm identified. However, a significant cause of the overbearing visual impact of the pump units is their white colour, which contrasts strikingly with the black finish of the host building and draws the eye. Whilst the council maintains that the units should be removed, it acknowledges that painting the units black would visually reduce their appearance, if the appeal were to succeed on ground (a). I am satisfied that this would overcome any unacceptable, overbearing visual impact and conflict with policy, given the separation distance, the intervening boundary screening and shed, the size of the units and the black backdrop of the host dwelling. This can be secured by condition and a period of 6 weeks would be easily sufficient.

17. Although the occupier of No 62 Denton Ave also states that the pump units are noisy, I have seen no compelling evidence of this. Noise was not a reason for issuing the enforcement notice, or for the refusal of the retrospective application ref 20/08209/FU, and the appellant contends that the units have a noise rating which means they operate almost silently from around 1 metre away. (The specification provided by the appellant indicates that the units operate at 45 dB(A) at 1 metre distance). During my visit I saw the fan operating on just one of the units, but I could only detect a low level, whispering hum, and nothing likely to interfere unacceptably with the living conditions of neighbours in their garden or house.

Overall conclusion and planning balance

18. Subject to the imposition of a condition requiring the pump units to be painted black, the development will not cause unacceptable harm to the living conditions of the occupiers of No 62 Denton Avenue in terms of visual impact or otherwise, but it will secure modest benefits in terms of energy efficiency and conservation. Accordingly, the development complies with the development plan as a whole, as well as with the Framework and the Council's SPD. As the Framework confirms, planning permission should therefore be granted unless material considerations indicate otherwise. There are no such material considerations.
19. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted, subject to a condition. The appeal on grounds (f) and (g) does not therefore need to be considered.

J A Murray

INSPECTOR