

Appeal Decision

Site visit made on 8 February 2022

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th February 2022

Appeal Ref: APP/Y1945/D/21/3288681

284 Cassiobury Drive, Watford, WD17 3AP

- 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 Dr K Sivagnanam against the decision of Watford Borough Council.
 - The application Ref 21/01221/FULH, dated 8 August 2021, was refused by notice dated 7 October 2021.
 - The development proposed is re-positioning of external AC units.
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Decision

1. The appeal is dismissed.

Main Issues

2. There are two main issues. Firstly, the effect of the proposed AC (air conditioning) units on the living conditions of occupiers of neighbouring properties with respect to noise; and secondly, the effect of the AC units on the living conditions of occupiers of 286 Cassiobury Drive with respect to outlook.

Reasons

3. Although the description of development is the re-positioning of external AC units it is clear from the evidence that the existing units are not authorised. They were previously refused planning permission on grounds of visual intrusion and potential noise impact. The current development proposal would therefore be more accurately described as the siting of external AC units.
 4. The AC units would be located on the side elevation of the appeal dwelling which lies close to the shared boundary with 286 Cassiobury Drive. A noise report was submitted in support of the appeal. This demonstrates that noise levels in the vicinity are very low at night. The report concludes that, without mitigation in the form of enclosures, the AC units would fail to meet the necessary noise emissions criteria at night. This could lead to a disturbing level of night-time noise for occupiers of No 286. The appellant points out that the closest window serves a non-habitable area. However, I have no evidence that in the absence of enclosures this would be the only materially impacted window.
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5. The appellant stated at the time of the planning application that it would be "impossible to accommodate an enclosure given the location of the units" because "the enclosure is substantially a large unit and requires large gap around the units". Since the units would be placed at a bracket height of 2.1m, immediately above a window and in a narrow side passage I consider this to be a reasonable assessment. Enclosures in this location would potentially obstruct the passageway and obscure part of the window.
6. The appellant's agent states on appeal that, contrary to the appellant's original belief, an enclosure could be attached to the side elevation of the property. However, the photograph of the enclosure submitted in evidence is of a large box structure located on a different building in a much more spacious location.
7. I have no compelling evidence that a similar enclosure could be accommodated around the proposed AC units. Moreover, the Council's Environmental Health Officer advised that in order to meet the mitigation requirements of the appellant's acoustic report, a specialist acoustic enclosure would need to be installed with a guarantee of sound reduction performance.
8. The appellant's agent suggests that the provision of enclosures could be required through a planning condition. However, in the absence of any details of the proposed enclosures, including their appearance, or any guarantee that they could be accommodated around the proposed AC units or that they would provide the necessary noise attenuation, a condition would be unlikely to meet the six tests for planning conditions set out in paragraph 56 of the National Planning Policy Framework (NPPF) and may also prejudice the interests of third parties.
9. The appellant's agent suggests that as no objection has been made by the neighbour at No 286 it can be assumed that the occupiers are not disturbed and that in any case the AC units are rarely in use. However, it cannot be assumed that a lack of objection means that there is no disturbance or that future occupiers might not be disturbed. The fact that the AC units are rarely used is not relevant because if permitted there would be no restriction on their future use.
10. It is therefore concluded on the first main issue that the proposed AC units would have a materially harmful effect on the living conditions of occupiers at neighbouring properties, and in particular at No 286, with respect to noise. This would be contrary to Policy SS1 of the adopted Watford Local Plan (Core Strategy) 2006-31 (LP), saved Policy SE22 of the Watford District Plan 2000 and the NPPF which, taken together, expect new development to protect the residential amenity of existing and future occupiers from material harm, including from noise.
11. Turning to the second main issue, the existing AC units are clearly visible from the large square bay side kitchen window at No 286. This window provides the principal outlook to the kitchen which connects with a large rear living room via a wide opening. The bay has glazing on three sides. The AC units have a utilitarian and industrial appearance. Although they are located on the side of the host dwelling and seen through a kitchen window, they are materially intrusive in the outlook due to their appearance and proximity.

12. The proposed units would be some 0.7m closer to the kitchen window and although set lower on the wall, the rearward unit in particular would be clearly visible at close proximity above the fence and above and to the rear of the projecting utility room at No 286. This would be materially intrusive and harmful to the outlook from the window. The appellant seeks to demonstrate that only an oblique view would be possible from the kitchen window but this appears to neglect that the bay window is glazed on three sides, widening the field of view.
13. The units would also be clearly seen from the window on the staircase at No 286. Although this does not serve a habitable room, the visual intrusion would be unavoidable when descending the stairs owing to the turn in the staircase and the half landing. Coupled with the intrusive appearance from the kitchen window this would further detract from the outlook at the dwelling.
14. It is argued for the appellant that the kitchen is under 10m² and so the outlook from the kitchen window would not be protected. However, the room is conjoined with and provides the main access to a large living room to the rear. Moreover, the side window is a large feature window. I therefore consider that outlook from this window, although limited by the side wall of the appeal dwelling, is material to the living conditions of occupiers of the dwelling.
15. It is further suggested that as the kitchen and living room are joined, the kitchen window does not provide the only source of light to the room. That may be so. However, it is not relevant to the main issue which relates to visual amenity and outlook and not light.
16. It is concluded on the second main issue that the proposed AC units would have a materially detrimental effect on the living conditions of occupiers of 286 Cassiobury Drive with respect to outlook. In consequence, they would conflict with Policies SS1 and UD1 of the LP and with the NPPF which, taken together, expect new development to protect residential amenity, create places with a high standard of amenity for existing and future users, be visually attractive and respect and enhance the local character of the area.
17. The appellant provides photographs of a number of other dwellings in Cassiobury Drive with unenclosed AC units attached to their flank walls and visible from the street. However, I have little or no information regarding these units in terms of their planning status, their noise rating or their relationship with windows in neighbouring dwellings. Their presence does not therefore alter or outweigh my conclusions regarding the proposed AC units.
18. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

KE Down
INSPECTOR