



Appeal Decision

Site visit made on 7 June 2022

by Katherine Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2022

Appeal Ref: APP/T5150/W/22/3290995

35 High Road, London NW10 2TE

- 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 Dennis Farrell (O'Farrells Traditional Family Butchers) against the decision of London Borough of Brent.
 - The application Ref 21/3831, dated 13 October 2021, was refused by notice dated 9 December 2021.
 - The development proposed is described as "retention of existing air con units".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit I observed that four air-conditioning units were in situ. However, 'retention' as referred to in the application form and decision notice does not constitute an act of development. At the time of my site visit it was evident that air conditioning units which were not materially different in the positions to those shown on the submitted plans had been installed. I have therefore determined the appeal on the basis that the development has already occurred.
3. The Brent Local Plan (BLP) was adopted by the Local Planning Authority (LPA) on 24 February 2022. This suite of policies now form part of the statutory development plan and I have therefore had due regard to this in my decision. The reasons for refusal referred to policies DMP1 and DMP7 of Brent Development Management Local Plan (2016). This document has been superseded by the BLP. I am satisfied that taking this approach has not prejudiced either party.

Main Issues

4. The main issues are the effect of the development on the:
 - Character and appearance of the appeal property and the surrounding area including the Willesden Green Conservation Area; and
 - The living conditions of existing occupiers of neighbouring properties with regard to noise.

Reasons

Character and Appearance

5. The appeal property is located in a terrace of 3-storey buildings which predominantly have commercial uses at ground floor and residential

accommodation above. The proposal relates to a ground floor unit within the terrace which is currently in use as a butcher's shop. It lies within Willesden Green Conservation Area (CA). The significance of the CA is derived, in part, from the way it includes shops, dwellings and other buildings that reflect this phase of London's expansion. These in turn inform its character and appearance characterised by Victorian terraces and individual buildings erected of London stock brick with red brick dressings. At ground floor level there are shopfronts. At the rear, buildings within the terrace include a mix of single and two-storey outriggers and extensions.

6. The positioning of the units, in particular the unit which is mounted on the flat roof is unduly prominent against the backdrop of the brick rear elevation of the appeal property when viewed from both within the CA on the lane and from the open aspect of the supermarket car park beyond. As such, the unit appears incongruous and inappropriate on the rear of the appeal property and adds to the clutter of service equipment on this elevation of the lane which has accumulated over time. The roof mounted unit introduces a large utilitarian structure which appears at odds with the other wall mounted equipment on properties in the lane.
7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty to have special regard to the desirability of preserving or enhancing the character or appearance of the CA. In considering the effect of the proposal on the CA the impact must be weighed against the harm it would have on the heritage asset.
8. Whilst the development is in a rear lane which functions as a service road and does not form the primary frontage of properties in the CA, it nevertheless lies within the designated heritage asset. The proposal fails to preserve or enhance the character or appearance of the CA and therefore causes harm to the asset. The harm to the asset is, nevertheless, less than substantial.
9. Paragraph 202 of the National Planning Policy Framework states that where the harm is less than substantial, this harm should be weighed against the public benefits of the proposal.
10. The need for air-conditioning units in a shop offers a public benefit. However, due to the small scale of the benefit which would only benefit the users of the shop this is ascribed only limited weight which would not outweigh the harm that I have found. Moreover, I have not been presented with any evidence that the scheme before me represents only possible configuration of air-conditioning units here.
11. I therefore find that the air-conditioning units have an unacceptably harmful impact on the character and appearance of the appeal property and fails to preserve or enhance the character or appearance of the CA. As such it would be contrary to BLP Policies DMP1 and DMP7 which seek to ensure that development complements the locality and conserves or where possible enhances the significance of heritage assets. It would also conflict with criteria D11) of Policy D3 and Policy HC1 of the London Plan (LP) which have similar aims.
12. The Council have referred to the Willesden Green Conservation Character Appraisal in the refusal reason, however, this document does not form part of

the statutory development plan for the borough and does not include policies against which proposals can be assessed.

Living Conditions

13. The upper floors of the terrace consist mostly of residential flats, including the appeal site. I observed that a number of opening windows to habitable rooms in the flats were relatively close to the units.
14. During my site visit I observed the units were in operation and heard that the unit mounted on the flat roof was clearly audible above the background noise of traffic in the surrounding area. Whilst at the rearmost section of the rear projection, I have no information before me whether the unit is faulty or operating in line with the manufacturer's specifications and therefore whether the operation of it would be problematic under normal circumstances.
15. The appellant has not provided any technical evidence to demonstrate that the normal operation of the air-conditioning units would not be audible above normal background noise levels. Nor have I been provided with any details for the operation of the units, for instance, in relation to the times when they might operate. Without these details I cannot be sure that the imposition of conditions would be able to sufficiently address the matter.
16. For the above reasons, I therefore conclude that there would be an unacceptable risk that the operation of the air-conditioning units could adversely affect the living conditions of the occupiers of neighbouring properties. This would conflict with BLP Policy DMP1 and LP Policies D13 and D14 which seek to ensure that the amenity of the occupiers of neighbouring properties is protected.

Other Matters

17. My attention has been drawn to a number of other properties within this and the adjacent terrace which have air-conditioning units sited on their rear elevations. I do not know the circumstances surrounding those units and whether they benefit from planning permission. Two of the installations I observed were entirely wall mounted and therefore not entirely comparable to the scheme before me which includes a roof mounted unit. Furthermore, their presence does not outweigh the harm identified above. The presence of other air conditioning units in the lane should not be used as a precedent for further inappropriate development. In any event, I must consider the appeal on its own merit. I note that no objections have been received in relation to the development, however the lack of objections does not equate to a lack of harm.

Conclusion

18. For the reasons given above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

Katherine Robbie

INSPECTOR