



Appeal Decision

Site visit made on 22 November 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2022

Appeal Ref: APP/T5150/C/22/3295509

77-79 Dudden Hill Lane, London, NW10 1BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr S Serdaroglu against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/21/0225, was issued on 17 February 2022.
- The breach of planning control as alleged in the notice is: without planning permission, the installation of 5 mechanical condensing units at the rear of the premises.
- The requirements of the notice are: (1) Remove the 5 mechanical condensing units at the rear of the premises; and (2) Remove all associated fixings, items, debris and materials arising from their removal from the premises.
- The period for compliance with the requirements is: 2 months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

The Notice

1. The outline on the plan accompanying the notice is drawn around 77 Dudden Hill Lane and not around No.79, even though it is clearly identifiable on the plan. However, it is agreed that the premises is 77-79 Dudden Hill Lane and that the notice relates to all 5 mechanical condensing units, including any that may be installed on No. 79. Having sought the views of the parties, I consider the notice can be corrected without injustice by substituting a revised plan.

Reasons

2. The appeal is made on the sole ground that no enforcement action could be taken in respect of the alleged breach of planning control at the date the notice was issued. To succeed on this ground, the appellant needs to demonstrate, on the balance of probability, that the installation of the 5 units was substantially completed on or before 17 February 2018 ("the Relevant Date"), 4 years before the notice was issued. If that can be shown, the units will be immune from enforcement action.
3. The 5 units are installed in a row along the rear wall of the premises, adjacent to the boundary with the closest dwelling at 441 Chapter Road. No evidence of their dates of installation has been provided.
4. A planning application made in October 2021¹ was supported by a report ("the 2021 report") confirming that 5 units were installed at the premises at that time, with unit 1 furthest from Chapter Road and unit 5 closest. These

¹ 21/3707, refused 30 November 2021

comprised 3 shorter and wider units manufactured by Marstair (units 1, 2 and 5), and 2 taller and narrower units manufactured by Mitsubishi (units 3 and 4). For ease of reference, I shall adopt that numbering to describe the positioning of units in this Decision.

5. Street View images taken at various times since June 2008 show units at the premises, in positions matching or similar to those currently there. However, their similar colours and distance from the camera, the resolution of the images and angles of view, and obstructions created by railings or foliage are such that 5 separate units are not clearly discernible in any image.
6. No unit with proportions corresponding to a Marstair unit is visible in the June 2008 Street View image. One with proportions corresponding to such a unit can be seen in the approximate position of unit 5 in the next image, dated June 2012. An image dated August 2014 shows 4 units, corresponding in shape and position to units 2-5. While this image cannot demonstrate the existence of unit 1, the 2021 report confirms it is the same model as unit 2, so it is possible they were installed at the same time or not long apart.
7. Images dated June 2015 appear to show 4 units and images dated June 2016 appear to show 3 or 4 units. None of those images shows a unit in the position of unit 1. An image dated June 2017 appears to show 3 units, most likely in the positions of units 3-5, but it is not possible to discern more than one unit in the last image from before the Relevant Date, taken in January 2018.
8. As many as 4 or 5 units can be seen in an image taken in March 2019, but no more than 2, in positions corresponding to units 4 and 5, can be seen in images dated December 2020. The most recent Street View image, dated April 2021, appears to show 2 or 3 units in positions corresponding to units 3-5. However, all these images are from after the Relevant Date and therefore cannot assist in demonstrating immunity from enforcement action.
9. The Council suggests the aerial images it produced show no units until after the Relevant Date, with one unit visible in May 2018, 2 in June 2019, and 5 in March 2020. However, when the angle of view is taken into consideration, it becomes apparent that in each instance the line of sight is partly obstructed by the roof and chimney of 441 Chapter Road, thereby limiting the weight that can be afforded to this evidence.
10. The onus of demonstrating that the 5 units that were in place when the notice was issued had been installed on or before the Relevant Date rests with the appellant. While his evidence confirms that units were present at various times before the Relevant Date, the resolution of the Street View images is insufficient to confirm their make or model.
11. The unit closest to Chapter Road, corresponding to unit 5, appears similar in all Street View images from June 2012 onward. Therefore, it could be that the same unit had been in this position since then and was still in place when the notice was issued. However, there is no evidence to indicate how likely it is that such a unit would operate effectively over that period, and therefore be kept throughout. Records of servicing and maintenance of this or any other unit might be sufficient to demonstrate continuous presence from on or before the Relevant Date, but no such evidence has been produced.

12. While it has been shown that there were units present before the Relevant Date, there is ambiguity as to their precise number at any given time. Furthermore, and critically, it has not been shown that any unit that may have been installed on or before the Relevant Date was still in place, and had not been replaced with a newer unit, when the notice was issued.
13. It has therefore not been demonstrated, on the balance of probability, that any unit that was in place when the notice was issued was immune from enforcement action at that time.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

15. It is directed that the enforcement notice is corrected by the substitution of the revised plan attached to this Decision.
16. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR



Plan

This is the revised plan to be substituted for the plan attached to the enforcement notice.

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Scale: Not to scale

