



Appeal Decision

Site visit made on 8 June 2023

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/K5600/W/23/3316681

21 Abbotsbury Close, Kensington and Chelsea, London, W14 8EG

- 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 John Gower against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/22/06657 dated 31 October 2022, was refused by notice dated 29 December 2022.
 - The development proposed is to install an air conditioning system internally with 1 no HVAC condenser unit to be positioned externally on the flat roof of the building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal was determined on the basis of a location plan, site plan, roof drawings (089) and a Noise Impact Assessment (October 2022 – 8526JG). The refusal reason confirms that it was essentially based upon a lack of satisfactory information which is required to assess the proposal in terms of both standards of noise attenuation (which are required to be based upon the plant installed) as well as visual impact. These matters could not be adequately assessed due to no information as to the air conditioning and condenser unit proposed being provided with the application.
3. As part of the appeal submissions before me, the appellant has now submitted product data sheets for the proposed air conditioning unit and condenser, product data sheets for the proposed acoustic cover and a proposed roof drawing (089-RD-001A). This is entirely new information which evolves the scheme beyond that considered by the Council. The appeal before me should be considered on the information which was available to the Council at the point of determination and new, evolved, information should not be considered.
4. There is, in some circumstances, scope to evolve an appeal scheme but this has to be balanced against any injustice which may be caused to interested parties and the Council. In this case, the information before me evolves the scheme and if I took this into account there would be injustice caused as neither the Council, statutory consultees (such as Environmental Health) nor potentially interested neighbours have had chance to consider the new information which has now been presented.
5. As a result of this, I have not taken into account the new information, as listed above in paragraph 3, within the determination of this appeal and have determined the appeal based upon the information which was available to the

Council at the point of determination as confirmed in paragraph 2. I find that the information which has now been submitted with this appeal would have been more appropriately considered within a resubmission to the Council rather than progressing straight to appeal for these reasons.

6. I note, within the appellant's statement, that it is stated that there were numerous failed attempts to contact the Planning Officer and that the exact specification for the equipment was never requested. Whilst this is acknowledged, for the reasons outlined above, I must determine the appeal on the information available at the point of determination and I have considered the proposal on its own merits with the behaviour of the Council during the determination period being outside the scope of this appeal.

Main Issue

7. The main issue is the visual and acoustic impact of the proposal.

Reasons

8. The appeal site is a three storey, terraced, dwelling located within the centre of Abbotsbury Close. The appeal site stands within the Holland Park Conservation Area (CA). The appeal proposal is described as installation of an air conditioning system internally with one HVAC condenser unit to be positioned externally on the flat roof. The specification of the proposed air conditioning system and condenser has not been submitted as part of the proposals and there is no information as to the standard of attenuation that the new condenser would require.
9. As part of the submission documents, the appellant has submitted a Noise Impact Assessment which identifies the lowest background sound levels in order to inform plant selection. This is summarised within the recommendations and mitigation measures overview within the report supplied. Despite this, based upon the information before me, it is not possible to assess the specification of the plant which would be placed upon the flat roof in question, whether noise would be appropriately managed and what would need to be installed to manage that noise. Without details of the specific plant to be installed, nor details of any associated infrastructure/acoustic enclosure, it is also not possible to give appropriate consideration as to visual impact of the overall proposal regardless or not of the presence of a parapet.
10. Based upon the information before me, at the point of determination as outlined in procedural matters above, it has not been demonstrated that the proposed equipment and acoustic enclosure likely to be required would preserve the visual amenity of the CA and the residential amenities of neighbouring occupiers with regard to noise, vibration and other disturbances. I find that such information is required to be selected along with details of the acoustic enclosure to allow appropriate assessment prior to determination. Such matters could not be controlled, for example, via a pre-commencement condition on this occasion – they are key to the proposal.
11. The proposal would be contrary to the Royal Borough of Kensington and Chelsea Local Plan 2019 (LP) Policy CL1 which confirms that the Council requires all development to respect the existing context, character and appearance of the area, LP Policy CL3 which requires all development to preserve or enhance the character and appearance of the CA and protect the

special architectural or historic interest of the area and its setting, and LP Policy CL6 which requires alterations and additions do not harm the existing character and appearance of the building and its context.

12. The proposal would also be contrary to the Noise Supplementary Planning Document (SPD) which confirms that reports should give recommendations and specifications of works, where necessary, that are required in order for the development to comply with the SPD and that any works necessary to control noise should be detailed on the planning application drawings. Where external noise attenuation equipment is proposed, such as acoustic enclosures or acoustic screens, the noise survey report should demonstrate the location, size, and visual impact of such equipment on the host building. This is noted to be especially important with regard to buildings situated with CAs.
13. I acknowledge the appellant's contention that the reasons for refusal quote general policies but do not demonstrate that they have been contravened. The Council's refusal is, I find, general in its overall approach as it does not have the specific information required to fully assess the impact of the end proposal and that this lack of information ultimately resulted in the refusal reason in question.

Other Matters

14. The appellant has made reference to approved developments at number 7, number 9 and 117 Abbotsbury Road as well as 95 unspecified approvals for similar development across the CA. Despite this, no further information, or evidence, has been submitted to support reference to these approvals which limits the weight I can apply to them within the determination of this appeal. In any case, each case must be considered on its own merits.
15. I acknowledge, within Appendix D, that there are other air conditioning and condenser units within the vicinity of the appeal site which could potentially demonstrate that they are characteristic of the area. Even if I had taken into account the presence of similar plant, the appeal would still have failed due to the lack of information provided with specific regard to the plant specification and acoustic attenuation measures required to demonstrate compliance with the guidance in the SPD as well as a lack of impact upon neighbouring residential amenity.

Conclusion

16. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Randle

INSPECTOR