



Appeal Decisions

Site visit made on 16 May 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Refs: APP/U5360/C/22/3301499 (Appeal A), 3301500 (Appeal B) & 3301501 (Appeal C)

31 Marsh Hill, Hackney, London E9 5QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Ankitkumar Patel (Appeal A), Mr Ranjanbala Patel (Appeal B) and Mr Chandrakant Patel (Appeal C) against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 12 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension and the installation of three condenser units located on the side of the single storey rear extension.
- The requirements of the notice are to:
 - (1) Remove the ground floor rear extension including three condenser units attached to the side wall of the extension, as shown in appendix 1;
 - (2) Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; and
 - (3) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises
- The period for compliance with the requirements is: Four (4) months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeals B and C are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decisions:

Appeal A

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals B and C

2. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The enforcement notice describes the condenser units as being attached to the side wall of the extension and includes a photograph showing the units located between the extension and the fence of No 29. The appellant does not dispute that they were attached at the time the notice was issued and similarly describes the units as being attached in their statement of case. During my visit, I saw that the units have been placed on a storage shelf which is adjacent to the building. I note that an interested party and the Council both refer to the

units as having been moved around the site. However, it is not disputed that the breach occurred, or that the works constitute development. I shall therefore consider the appeal on this basis.

Ground (a)

Main Issues

4. The main issues of the appeal are the effect of the appeal scheme on:
- The character and appearance of the area; and
 - The living conditions of nearby residents, with particular regard to noise.

Reasons

Character and appearance

5. The appeal site is located along a parade of commercial units which front onto Marsh Hill and comprises a retail unit at the ground floor, with living accommodation above. The building is constructed in a buff brick and render to the rear, with a dormer extension above. The appeal scheme comprises a single storey rear extension which has been constructed using wood, with a white uPVC cladding to the outside and a felt roof to the rear and three condenser units to the side of the extension between the extension and No 29. The extension was being used for the storage of goods for the commercial unit at the time of my visit.
6. Policy LP1 of the Hackney Local Plan 2033 (adopted July 2020)(the HLP) seeks development which uses attractive, durable high quality materials which complement local character. The materials used in construction of the extension contrast with the traditional materials used in construction of the main building and in my view, do not complement local character, contrary to policy LP1 of the HLP.
7. Although other properties along this section of Marsh Hill have erected single storey extensions in a variety of different materials, the Council advise that some of these extensions have now become immune from enforcement action, while others have enforcement active cases and are being investigated. It is possible, therefore, that some of the structures erected to the rear may be unlikely to be removed. However, I cannot be sure which structures would be retained. As such, they do not weigh in support of the appeal scheme.
8. I note within an officer report written in respect of application reference 2021/2629 an officer concluded that as it would not be widely visible from the public realm it was considered acceptable. I also note that the decision notice did not refuse the scheme on the basis of character and appearance. However, that decision is not the subject of this appeal. The enforcement notice does raise concern regarding the materials used in construction of the building and the Council has advanced its case on this basis.
9. I accept that public views of the extension are limited. However, views of the structure are possible from the rear of properties which overlook the appeal site. Given the substantial extent of the building, the use of contrasting materials is likely to be particularly noticeable when viewed from nearby properties. Thus, I find the extension harms the character and appearance of

the area, contrary to policy LP1 of the HLP, the requirements of which are set out above.

Living conditions: Noise

10. The appeal scheme comprises three Marstair Refrigeration & Specialist Air units (the condenser units), located between the extension and No 29 Marsh Hill. Although the appeal site comprises a commercial unit, living accommodation is provided above. Outdoor amenity space has been created above the ground floor of the property, with faux grass, a bike and play equipment and gates providing access to the flat roof of the extension.
11. To the rear of the appeal site is No 2 Daubeney Road, a residential property, the garden of which runs alongside the appeal site. The occupants of No 2 Daubeney Road have raised concern regarding the noise emitted from the condenser units, affecting their enjoyment of the garden and impacting their sleep. They comment that the noise is worst in warm weather, at a time when they are spending more time in their garden and needing to sleep with their windows open.
12. Policy LP2 of the HLP seeks to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours, including with respect to noise. Policy D14 of the London Plan states in order to reduce, manage and mitigate noise, proposals should avoid significant adverse noise impacts on health and quality of life and, in this respect, reflects wording contained within the National Planning Policy Framework (2021)(the Framework).
13. The Noise Policy Statement for England (2010)(the NPS) sets out the aim to mitigate and minimise adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development. The aim refers to the situation where the impact lies somewhere between LOAEL¹ and SOAEL² and requires that all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development.
14. In support of the appeal, the appellant has submitted a Noise Impact Assessment (the NIA). The assessment refers to BS4142:2014+A1:2019 which suggests that a difference of around +10dB or more is likely to be an indication of a significant adverse impact, depending on the context and a difference of +5dB is likely to be an indication of an adverse impact, depending on the context. The assessment concludes that the rating sound level of the units over background sound levels would be +15dB, indicating that the units are having a significant adverse impact on the living conditions of occupants of No 2 Daubeney Road. The NIA makes a number of recommendations to address noise.
15. Paragraph 55 of the Framework states 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions...'. The appellant asserts that it would

¹ LOAEL – Lowest Observed Adverse Effect Level – This is the level above which adverse effects on health and quality of life can be detected.

² SOAEL Significant Observed Adverse Effect Level – This is the level above which significant effects on health and quality of life occur.

be appropriate to grant planning permission subject to conditions which require the installation of the noise mitigation measures.

16. As part of the NIA, an environmental sound survey was carried out from 13 December 2021 to 14 December 2021. The assessment identifies a $LA_{90,15 \text{ min}}$ of 34.0dB, however, it has used 37dB as the value is deemed 'typical'. The survey was carried out on a Monday and Tuesday, which may not be reflective of quieter times, such as a Sunday. Given this, and the limited period over which the data was collected, I am concerned that using 37dB may not be appropriate in this case.
17. The assessment states that, as the units have already been installed, a 1 min [sic] short-term measurement of the units was undertaken on 13 December 2021. The sound level meter was positioned 1m away from the noise source and was carried out between 10:52 and 10:53. The noise emissions are given $LA_{eq,t}$, with the noise sources stated to have been working at full capacity. However, it is not clear from the NIA how the assessor ensured the units were working at full capacity.
18. While I only observed the units for a limited duration during my visit, noise arising from the units appeared to fluctuate, with one of the units much louder than the others. In my experience, where an assessment is based upon actual noise levels generated by equipment, it is usual to take measurements over a number of days, to understand if and how the noise changes over time. It is not clear from the NIA why a shorter period of time was deemed sufficient.
19. It is also not clear whether consideration has been given as to the effect of ambient temperature on the noise generated by the units. Since the entire assessment appears to have been based upon the noise arising during this 1 minute, I have significant concerns regarding the accuracy of the conclusions and recommendations contained within the report.
20. Moreover, while the assessment has considered the effect of noise on occupants of the building at No 2 Daubeney Road, it has not considered the likely effects on users of the rear garden of the property, which is much closer to the condenser units than the building, nor has it considered the effect on occupants of the residential unit at No 31, or their use of the outdoor amenity space above the ground floor.
21. Although corrections are given for tonality and impulsivity, it is not clear why the corrections used have been chosen and whether they are sufficient, having regard to perceptibility at the noise receptor. Whether the corrections used are appropriate in this case is therefore unclear which in my view, undermines the conclusions of the NIA.
22. With respect to the recommendations of the NIA, it advises that the make, model and location of the external unit should not be altered and states these details are identified in Appendix C of the report. However, Appendix C shows the units in a different location and does not identify the make or model of the unit. It is not clear whether the intention is to relocate the units and if so, what effect this would have on nearby sensitive receptors.
23. An appeal under ground (a) is made on the basis that planning permission ought to be granted for the breach of planning control stated in the notice. Relocating the units, albeit within the same site, does not in my view, form any

part of the matters specified in the enforcement notice. Furthermore, locating the units between the extension and the rear garden of No 2 Daubeney Road would necessitate the removal of vegetation, which limits views of the building from No 2.

24. The appellant suggests the inclusion of conditions to require that the units are enclosed by an acoustic enclosure that reduces the noise emissions of the units by at least 15dBA and the units are fitted onto anti-vibrational mounts. However, in light of the concerns I have raised above, it is not clear to me that the specification proposed would prevent harm to the living conditions of nearby occupants, or that a reduction of 15dBA would be sufficient in this case.
25. Furthermore, the design of the attenuation is shown to include 18mm ply, which in my view is not a high quality durable material which complements local character. If the units are to be retained in their current elevated position, this material would be noticeable from outside of the site and would further emphasise the discord of the materials used in construction of the extension.
26. I am not persuaded that the mitigation proposed by the appellant would ensure there are no significant adverse noise impacts on the living conditions of nearby occupants, or that it would be possible to impose conditions to address such harm. Consequently, in my view, the appeal scheme harms the living conditions of nearby occupants and is contrary to policy LP2 of the HLP, policy D14 of the LP and the relevant expectations of the Framework and the NPS, the requirements of which are set out above.

Planning Balance and conclusion

27. The extension provides storage space for the commercial use and the condenser units enable the storage of goods which would not otherwise be possible due to ambient temperatures. This presumably enables the appellant to offer a wider range of goods to customers than would have previously been possible. Although not advanced by the appellant, I consider such matters weigh in support of the appeal scheme.
28. However, as set out above, I have found the appeal scheme harms the character and appearance of the area and harms the living conditions of nearby occupants. I am not persuaded conditions would address the harms I have identified and consider the harms outweigh the benefits arising from the storage of a wider range of goods.
29. Thus, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

30. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
31. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the

land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice that its purpose is to remedy the breach.

32. Although the appellants have appealed under ground (f), the matters contained in their appeal statement relate to the merits of the case and whether or not planning permission should be granted. I have considered these matters under ground (a) above and shall not repeat them here.
33. The appellants have not advanced any lesser steps or shown that the requirements of the notice would exceed what is necessary to remedy the breach. Removing the extension and condenser units, making good any damage to the property as a result of the removal of the works and removing all materials etc arising from compliance would restore the land to its condition before the breach took place. Consequently, in my view the requirements are not excessive to remedy the breach and so the appeal under ground (f) must fail.

Other Matters

34. The Council has referred to the Residential Extension and Alterations SPD 2009, however, the appeal scheme has been erected in relation to commercial development and so I do not consider the document to be determinative in this case.

Conclusion

35. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR