



Appeal Decisions

Site visit made on 27 June 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 July 2023

Appeal A Ref: APP/J4423/C/22/3299518

Land at 1 Ecclesall Road South, Sheffield S11 9PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Primesite Group Ltd against an enforcement notice issued by Sheffield City Council.
- The enforcement notice, numbered RC/1267312, was issued on 5 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the undertaking of operational development being the provision of 9 air conditioning units attached to the north facing elevation of the building at first floor level.
- The requirements of the notice are:
 - (i) Remove the 9 air conditioning units attached to the first floor elevation of the building on the Land.
 - (ii) Make good using matching material any damage done to the building arising from the performance of 5(i).
 - (iii) Remove from the Land any materials and waste resulting from compliance with paragraph 5(i) of the notice.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Appeal B Ref: APP/J4423/W/22/3299373

1 Ecclesall Road South, Sheffield S11 9PA

- 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 Primesite Group Ltd against the decision of Sheffield City Council.
- The application Ref 21/04019/FUL, dated 6 September 2021, was refused by notice dated 10 March 2022.
- The development proposed is the 'like for like replacement of stolen air conditioning units'.

Decisions

1. **Appeal A** - It is directed that the enforcement notice is corrected by replacing the word 'building' in sections 3 and 5(i) and (ii) of the notice with 'frontage building'.
2. Subject to the correction, 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.
3. **Appeal B** – The appeal is dismissed.

Preliminary Matters

4. Following a refusal of planning permission for the retention of 9 air-conditioning units on the Land, Sheffield City Council served an enforcement notice to secure the removal of the units in the interests of remedying the alleged effects on neighbouring residents. As set out above, there are 2 appeals – one in relation to the refusal of planning permission and the other against the enforcement notice on ground (a) - that planning permission ought to be granted for what is alleged in the notice.
5. The development in each Appeal is the same. However, whereas the planning Decision Notice includes reference to both noise and outlook, the enforcement notice only references noise concerns. Nevertheless, as the site planning record is material to the development for which planning permission is sought by either route, I have dealt with the matters in the round and covered the relevant issues concurrently to avoid repetition.
6. The description of development appearing in the banner heading above in relation to Appeal B is taken from the planning application form. However, the Council's Decision Notice describes the development as 'Retention of 9 air conditioning units'. This was also used by the appellant for the purposes of Appeal B. As a more succinct description of the development, I do not consider that any party will be prejudiced by my reference to it.
7. At the time of my site visit, the weather was mild such that the air conditioning units were not operational. While I was able to make a direct assessment of the visual effects of the development, I was unable to witness any audible output arising from it. Accordingly, the matter of noise has been assessed on the basis of the written submissions only.

The Notice

8. The notice identifies a large site with two distinct buildings upon it. Although it clearly describes the matters which appear to the local planning authority to constitute a breach of planning control, the location of the breach on the site is less clear. It refers to 'the building' (singular). Notwithstanding that the plan shows the relevant building annotated as no.1, this gives rise to a degree of ambiguity.
9. However, having regard to the submissions of both parties and their attendance at my site visit, I do not consider any injustice or prejudice would arise to any party if I were to improve the precision of the notice by specifying the relevant building. Accordingly, the word 'building' in sections 3 and 5(i) and (ii) of the notice should be replaced by 'frontage building'.

Appeal A: Ground (a) – the deemed application for planning permission Appeal B - the refusal of planning application Ref. 21/04019/FUL

Main issue

10. The main issue in both appeals is the effect of the development on the living conditions of nearby residents.

Reasons

11. The site lies within a mixed-use area. It borders some residential properties including an end terrace dwelling at 345 Psalter Lane on the site's northern

boundary. To the west is a busy road junction where Ecclesall Road South meets Psalter Lane and other roads.

12. The local topography rises to the east of the junction. As such, the garden areas of the adjacent terrace rise to their rear plot boundaries. The neighbouring garden at No345 includes a decking area installed adjacent to the common boundary with the site.
13. The development consists of 9 air conditioning units capable of providing cooling and heating functions for the 3-floored office building fronting Ecclesall Road South. The bank of various types of units are set to the rearward section of the building's northern elevation at first floor level.
14. In support of the development, the appellant has submitted an acoustic assessment of the effect of the installed units. Whilst there is no dispute between the main parties that the night time operation of the units would lead to a significant adverse effect on the neighbouring residents, it concludes that, due to the measured background noise levels arising primarily from traffic on the adjacent roads, the daytime effect would be negligible.
15. The methodology relies significantly on the measurement of background noise levels. However, in contrast to the areas immediately to the rear of the terrace - where road noise would be somewhat reduced by the presence of the intervening 2-storey building, the equipment used to measure the background level was open to the roadway via the gap between No345 and the office building.
16. This is likely to result in an overestimation of the background noise levels at the rear elevation of the terrace and the garden areas immediately beyond it. In the absence of actual measurements screened by the terrace building, the effect of the measured noise output of the units against the background level is therefore likely to be skewed.
17. Moreover, the acoustic assessment is based on a constant noise level being emitted from the units. This is distinct from the reported observations of the Council's representative who noted that not all units were operational but were subject to switching on and off. According to the assessment methodology, this would incur an intermittency factor as it could give rise to additional audible effects. This is not accounted in the assessment.
18. The assessment's findings seem to be at odds with the report of the effects experienced by the neighbours. This suggests that the noise permeates much of the habitable accommodation of No345 and the nearest rear gardens. Whilst all parties accept that air-conditioning units were previously located on the building's northern elevation, in contrast to those, the operation of the new units has led to a noise complaint being made.
19. I note the appellant's assertion that the neighbour's complaint did not occur until several months after the installation of the new units. However, there is little to clarify whether the building was occupied in the interim, or if the units were individually or collectively operational prior to the time of the complaint. It is also notable that the complaint was made when warmer weather is more likely compared to the installation period. Accordingly, I find this a matter of limited weight.

20. The appellant's contention that the units could be switched off when the building was not in use is acknowledged. However, little clarification is provided as to when that is. As subsequent usage might coincide with noted times of lower background noise such that they require alternative mitigation proposals, the ability to mitigate the effects of the noise impact are also uncertain. As it could require the relocation of some, if not all of the units, such that a separate detailed assessment would be necessary, it is not therefore a matter capable of being reasonably dealt with through planning condition/s.
21. In support of the development, the appellant refers me to the fact that the proposals replaced earlier units positioned on the same elevation of the building. However, there is little to demonstrate their size, number or the nature of any associated noise. Moreover, there is no dispute between the main parties that the now installed units are located higher on the elevation such that any acoustic mitigation provided by the boundary wall would be less.
22. Furthermore, as the uses taking place within the building have changed since the previously installed units were removed. The demand for heating or cooling may not be equitable in comparison. In conjunction with the limited evidence as to the planning status of the former apparatus, I find the previous site circumstances to be of limited weight in the appeals.
23. I recognise that the Council has not presented technical evidence to counter the findings in the report. Nevertheless, when taking the above together with the position and proximity of the units to the neighbouring domestic property, I am not persuaded that the cumulative effect of the units does not give rise to a significant adverse effect on the living conditions of neighbouring residents through excessive noise.
24. The installed units are located above the height of the boundary wall and are roughly level with the sitting height of the decking area and the first-floor windows of No345. I acknowledge that, given the height of the decking, views of the former equipment may have been possible. However, in the now raised position, they would be more prominent than units set lower on the elevation.
25. The units would not be incongruous features on a modern commercial building. Nor would they be prominent on the Psalter Lane/ Ecclesall Road South street scene. However, due to their height, number, and cumulative area, as plant with a utilitarian appearance, the array of bracket-mounted units projecting from the building's façade will dominate some of the rearward views from the dwelling and from within parts of its rear garden.
26. Being sited within a short distance of the dwelling and garden, they will appear prominent and imposing. Furthermore, as a significant and detracting feature, they will loom large over users of the garden area, particularly those on the raised decking.
27. For the above reasons, I find the development results in a significant adverse effect on the living conditions of the neighbouring residents through noise associated with the units' operation and by creating a dominant and poor outlook. It conflicts with Policy H14 of the Sheffield Unitary Development Plan [1998] and Paragraph 130 of the National Planning Policy Framework as they seek to achieve well-designed places that offer a high standard of amenity for existing users.

Conclusion

28. For the reasons given above, the development is contrary to the development plan and there are no material considerations that indicate a decision should be made other than in accordance with it. I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, or the appeal under section 78 of the Act.

R Hitchcock

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/J4423/C/22/3299518	Primesite Group Limited
Appeal B	APP/J4423/W/22/3299373	Primesite Group Limited