



Appeal Decision

Site visit made on 2 August 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 August 2023

Appeal Ref: APP/U5360/C/22/3304217

160 Mapledene Road, Hackney, London E8 3LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ahmet Sevin against an enforcement notice issued by London Borough of Hackney.
 - The notice was issued on 28 July 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the installation of an air conditioning unit atop the roof of the ground floor rear extension.
 - The requirements of the notice are to: (1) Remove the air conditioning unit from atop of the ground floor rear extension (highlighted in Appendix 1); (2) Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; (3) Upon completion of the above steps, 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: 1 (one) month.
 - 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.
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Decision

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

The appeal on ground (a) and the deemed planning application

2. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

3. The main issues in this case are:
 - whether the air conditioning unit would preserve or enhance the character or appearance of the Graham Road and Mapledene Conservation Area (CA); and
 - whether the air conditioning unit harms the living conditions of occupants of neighbouring properties in terms of noise.

Reasons

Character and appearance of the CA

4. The appeal relates to an air conditioning unit which has been installed on the flat roof of the single storey extension to the rear of an off licence/convenience store with residential units above and adjoining. The surrounding area is predominantly residential and, from what I experienced during my visit, is a relatively quiet neighbourhood. The appeal site is located on the corner of Mapledene Road and Lansdowne Drive and is opposite the red brick three-storey post war Mapledene Estate.
5. The site is within the Graham Road and Mapledene CA which is a designated heritage asset. The significance of the CA derives from the mid-19th century housing that has resulted in well-proportioned and pleasant streets in a limited range of materials and palette. Although, it is recognised that later developments detract from this significance, particularly through the introduction of mid and high-rise buildings, incorporating alternative materials such as concrete and plastic.
6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The National Planning Policy Framework (the Framework) at section 16 sets out that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to that asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification.
7. Although I could not see the unit from the ground and I was not provided with access to the neighbouring properties, the Council supplied photographs of the unit in situ. While not visible from the public realm, it is visible from the rear of some nearby properties. It is of an industrial design and probably an uncommon feature within its residential surroundings. Nevertheless, due to its size and mostly hidden position, I consider it to have a neutral effect on the CA.
8. Accordingly, I find the development leaves the character and appearance of the CA unharmed, that is to say, preserved and a finding on overriding public benefits is not required in this instance. In this respect I find that there is no conflict with Policy LP1 and Policy LP3 of the Hackney Local Plan 2033 (adopted July 2020) (the HLP) which requires development to preserve or enhance the significance of the historic environment.

Living conditions

9. Notwithstanding my findings in terms of the effect of the development on the heritage asset, the second reason for issuing the notice referred to the capability of the air conditioning unit to cause a nuisance to the amenity of neighbours by reason of noise. I note that the appellant states on the appeal form that the unit has been fitted with anti-vibration mountings to mitigate excess noise.
10. I have little evidence from either party that the air conditioning unit does or does not cause unacceptable noise levels. There are no observations from the Council's Environmental Protection Team. Neither party has provided a noise

survey or any measured readings, even though I note that the appellant indicated that a sound report was to be carried out to establish the level of noise created. Without details it is not possible to determine if noise levels cross the no or lowest 'observed effect levels' and advice in the national Planning Practice Guidance¹.

11. However, there are comments from neighbours detailing the nuisance that is experienced regarding noise due to the proximity of the equipment to their living accommodation. The unit is said to produce noise throughout the day and evening which is heard by the occupants of neighbouring properties in their garden and kitchen and back upstairs bedroom when the windows are shut. The noise is reported as 'quite constant throughout the day, switching off every now and then for three to five minutes to power back up'. The noise nuisance is said to have had a negative impact particularly through the summer months when time is spent in the garden.
12. The appellant implied that suitable housing would be fitted to 'disguise the unit' and I expect that such housing may provide an acoustic screening to help alleviate problems caused by the noise generated by the unit. However, there is no evidence before me to demonstrate whether acoustic screening would help to mitigate against the nuisance experienced by the occupants of neighbouring properties.
13. Based on the limited evidence before me, I cannot be satisfied that noise levels from the air conditioning unit are within acceptable limits so as not to cause harm to the living conditions of the occupants of neighbouring properties. In this respect, I find that the development conflicts with Policy LP2 of the HLP which seeks to ensure development is appropriate to its location and is designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours.
14. There is also conflict with Policies D14 of the London Plan (adopted March 2021) (the LP) which states that to reduce, manage and mitigate noise to improve health and quality of life, residential and other non-aviation development proposals should manage noise by, among other things, avoiding significant adverse noise impacts on health and quality of life. Policy LP33 of the HLP refers to new retail development, Policy D1 of the LP refers to defining an area's character to understand its capacity for growth and Policy D4 of the LP relates to masterplans and design codes. In these circumstances, I find their relevance is limited.

Conclusion

15. For the reasons given above, I conclude that although I consider that the development does not harm the character or appearance of the CA, there is harm to the living conditions of occupants of some neighbouring properties in respect of noise nuisance. While I appreciate that the unit is important for the business, this does not outweigh the harm I have identified. Therefore, the appeal cannot 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 Act as amended.

S A Hanson INSPECTOR

¹ Paragraph: 005 Reference ID: 30-005-20190722