



Appeal Decisions

Site visit made on 19 July 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Appeal A Ref: APP/H1840/C/22/3304996

Appeal B Ref: APP/H1840/C/22/3304997

10 Vallenders Road, Bredon, Tewkesbury GL20 7HL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr N Bradley and Appeal B is made by Mrs S Bradley against an enforcement notice issued by Wychavon District Council.
 - The notice was issued on 8 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of an air conditioning unit on a garden outbuilding.
 - The requirements of the notice are
 1. Remove the air conditioning unit and its associated fixtures and pipework from the garden outbuilding.
 - The period for compliance with the requirement is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c) of the Town and Country Planning Act 1990 (the Act) 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 is proceeding on grounds (b) and (c) as ground (a) has lapsed as the prescribed fees have not been paid within the specified period.
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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 S177(5) of the Act as amended.

Appeal B

2. The appeal is dismissed.

Application for Costs

3. An application for costs was made by Mr N Bradley against Wychavon District Council. This application is the subject of a separate Decision.

The appeal under ground (b) – Appeals A and B

4. An appeal under ground (b) is that the breach of planning control alleged in the notice has not occurred as a matter of fact. The allegation is the installation of an air conditioning unit. As the unit has been installed, the breach of planning control has occurred as a matter of fact. The other matters raised by the appellants under this ground relate to ground (a) rather than ground (b). The appeal under ground (b) therefore fails.

The appeal under ground (c) – Appeals A and B

5. This ground of appeal is that what is alleged does not amount to a breach of planning control. The burden of proof is on the appellants and the relevant test is the balance of probabilities. The appellants have set out two separate arguments under this ground. Firstly, that the air conditioning unit is an accretion to the building which is 'de minimis' and does not amount to development within the meaning of Section 55 of the Act.
6. The appellants refer to air conditioning units being similar to CCTV, security alarms and lighting as not having their own 'class of development and being below the threshold for operational development and therefore de minimis. The Council has referred to appeal decisions where applications have been made for planning permission for air conditioning units to indicate that planning permission is required for the development.
7. However, the wording of Section 55 is relevant. Section 55 of the Act defines development as including the carrying out of building engineering or other operations in on over or under land. It comprises activities which results in some physical alteration to the land¹ which has some degree of permanence. The air conditioning unit is a permanent addition to the building with new wiring and pipework and is development.
8. Section 55 of the Act does exclude from the definition of development works which do not materially affect the external appearance of the building and which could therefore be considered 'de minimis.' The air conditioning unit has a utilitarian appearance which is in contrast to the domestic garden building. It is located in an elevated prominent position above the boundary fence between the appeal site and No 8 and is visible from the neighbouring garden which is at a lower level. The occupier of No 8 has commented upon the visual appearance of the unit. As a matter of fact and degree, the location of the unit does materially affect the external appearance of the garden building. The air conditioning unit does fall within the definition of development and is not de minimis.
9. Alternatively, the appellants seek to rely upon permitted development rights under Class E of the Town and Country (Planning) (General Permitted Development) (England) Order 2015 as amended (the GPDO). Class E permits *'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such or the maintenance improvement or other alteration of such a building or enclosure.'* The appellants consider the air conditioning unit is an alteration to a Class E outbuilding. However, the fabric and structure of the garden building itself is not altered, maintained or improved by the addition of the air conditioning unit. The unit does not therefore fall within Class E of the GPDO. The wording does not provide for additions of any size or nature to a Class E building which is itself strictly limited in terms of size.
10. Although the Council states that air conditioning units do require express planning permission, it has also referred to air conditioning units being 'akin' to Air Source Heat Pumps (ASHP). Part 14 of the GPDO 'Renewable Energy' includes Class G which refers to the installation of a microgeneration air source

¹ Section 336 of the Act defines a building as including any structure or erection and any part of a building but not plant and machinery within a building.

heat pump. However, being akin to an AHSP does not bring the development within Class G. In any event, the location of the development within 1 metre of the neighbouring fence means that it falls outside the conditions of Class G of the GPDO even if it did fall within the description.

11. On the evidence before me, in the absence of express planning permission or permitted development rights for the development, there has been a breach of planning control. The appeal under ground (c) therefore fails.

The appeal under ground (a) and the Deemed Planning Application (the DPA) - Appeal A

The Main Issue

12. The reasons for issuing the notice relate to concerns about noise impact due to the location of the development.
13. The main issue is therefore whether the development gives rise to harm to the living conditions of occupiers of No 8 Vallenders Road with particular regard to noise in view of its location.

Reasons

14. Policy SWDP 31 states that development must be designed in order to avoid any significant adverse impacts from pollution which includes noise.
15. Whilst the appellant has not put the air conditioning unit into operational use, the DPA is for planning permission for the air conditioning unit. The noise that the air conditioning unit would generate is therefore a relevant consideration in assessing whether or not planning permission for the development should be granted. The onus is on the appellant to provide the appropriate evidence to demonstrate that the use of the development in its current location would not give rise to noise issues.
16. No noise assessment has been provided. Whilst the parties both refer to an estimated maximum sound level of 50 dba in the unit's specification and manual, the appellant states that he has proved in Appendix 2 that the unit does not exceed MCS Planning Standards which is said to be 42 dba. Appendix 2 consists of around 50 pages and has a heading of 'Correspondence with Enforcement Officers'. I have found reference in Appendix 2 to the unit being marketed as silent running and operating with a noise level of less than 50db which is not the same as not exceeding 42dba.
17. The appellant also states that the MCS standards do not apply to air conditioning units in any event but does not state what standards should apply when the unit can operate at 50dba. The appellant refers to providing calculations prior to the issue of the notice to the Council but no calculations have been submitted as part of this appeal. In the absence of a noise assessment, I am unable to conclude that the development complies with the relevant policies and does not harm the living conditions of the neighbouring occupier with regard to noise.
18. The appellant considers that any perceived harm could be overcome by providing screening on his side of the fence of the whole unit as the boundary fence is owned by the neighbour and is currently around 1.8 metres. No details are provided of the type or nature of the screening proposed which would have

to fit between the very modest gap between the unit and the existing boundary fence and not affect its function.

19. Without any further details or a noise assessment, I do not know whether screening would provide an acoustic barrier. Although the appellant has suggested a noise condition could state that the unit will not exceed a certain level at receptor points, it is not clear how that would be worded. It is also not clear how a 'standard condition' could be applied to these particular circumstances with the close proximity to the neighbouring garden and I have no details of ambient noise levels.
20. The appellant has referred to a fall-back position of placing the development on top of the garden building in order to fall within Class G of the GPDO even though he do not consider that Class G applies. The Council has previously suggested locating the unit on other sides of the building with sound proofing, if required, if the notice is upheld. However, discussions about an alternative location are a matter for the parties. I am unable to attach any weight to a fall-back location on the roof in the absence of any evidence that the development is an ASHP and falls within Class G.
21. There is an air conditioning unit at No 9 Cherry Orchard which is the property to the rear of the appeal site which the appellant considers to be comparable to the development. The unit at No 9 is located on a side elevation of the dwelling with a buffer of a garden between that unit and the rear boundary fence of the appeal site. Whether or not that unit requires planning permission is a matter for the Council.
22. The appellant has also provided documents including a noise calculation relating to another air conditioning unit which is located on the front of a dwelling which has been granted planning permission. Neither of the examples provide appear to be comparable to the development in terms of proximity of neighbouring properties and gardens and noise. It remains the case that each development has to be assessed on its own particular facts and circumstances.
23. For the reasons given, I am unable to conclude that the development does not harm the living conditions of occupiers of No 8 Vallenders Road with particular regard to noise. It is therefore contrary to Policy SWDP31: Pollution and Instability which states that development proposals must be designed in order to avoid any significant impacts from pollution and the supporting text indicates that pollution includes noise.
24. The development is also contrary to Paragraph 185 of the National Planning Policy Framework which states that development should mitigate and reduce to a minimum potential adverse impacts resulting from noise. I find Policy SWDP21 to be less relevant to the main issue. The Council is not relying upon Policy NP4 of the Bredon, Bredon's Norton and Westmancote Neighbourhood Plan as it relates to safeguarding privacy and daylight amenity of neighbouring properties rather than noise.

Other Matters

25. Comments made by third party objectors include concerns about the lack of planning permission for the garden building and the shed. However, this appeal relates to the air conditioning unit only.

26. The appellant is critical of the manner in which the Council has dealt with this matter after being told at the pre application process that a breach of planning control had occurred. However, these are not matters which are relevant to my consideration of the merits of the appeal.

Conclusion on ground (a)

27. I have found that I am unable to conclude that there would be no harm to the living conditions of the nearby occupier with regard to noise. I find that the development conflicts with the development plan read as a whole, and there are no material considerations to indicate that the development should be permitted despite the policy conflict. The appeal under ground (a) fails and planning permission is refused.

Overall Conclusion

28. For the reasons given above, I conclude that Appeal A 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. Appeal B is dismissed.

E Griffin

INSPECTOR