



Appeal Decision

Site visit made on 26 June 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2023

Appeal Ref: APP/A5270/C/22/3296367

Premises known as 3 St Georges Road, Chiswick, London W4 1AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
 - The appeal is made by Mr & Mrs David Jackson against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice, numbered 21EN0570(1), was issued on 3 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of air conditioning units on the roof of the property.
 - The requirements of the notice are to:
 - A. Permanently remove all air conditioning units and associated pipework from the roof of the property.
 - The period for compliance with the requirements is one month.
 - The appeal 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.
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Decision

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 Town and Country Planning Act 1990, as amended (the Act).

Preliminary Matters

2. The appeal is made pursuant to grounds (a) and (f) under section 174(2) of the Act. Section 173(3) states that an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
3. The alternative scheme¹ advanced by the appellant as part of their ground (f) appeal is neither for the retention of the unauthorised development nor does it benefit from planning permission. Therefore, in order to give proper consideration to this alternative, I will deal with it under ground (a) and, amongst other things, consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice, either with or without conditions.

¹ Drawing No. 22-017-P02, Proposed Roof Plan, dated Mar 2022

The appeal on ground (a)

4. The appeal on ground (a) is that planning permission ought to be granted for the matters alleged in the notice. In doing so, the appellant seeks to retain the air conditioning units on the roof of the property as currently installed.
5. From a review of the evidence before me, the main issue is the effect of the development on the character and appearance of the host property and the surrounding area.
6. The appeal property is a two-storey mid-terrace Victorian house located on a residential street. The property is typical of other terraced housing in the surrounding area, the street scene of which is generally characterised by red brick houses with pitched roofs and two-storey forward projecting gabled bays with decorative stone detailing. At the rear, a dormer extension has been added to the property along with other additions and alterations. Other than some rooflights and the occasional TV aerial and satellite dish, roofs are generally uncluttered and are flanked by robust brick chimney stacks with detailing that reflect the architectural style and period of the houses. These features combine to give the street a strong sense of rhythm, uniformity and cohesion, which make a positive contribution to the character and appearance of the surrounding area.
7. As installed, the development comprises two air conditioning units positioned on either side of the flat roof of the dormer extension, with pipework extending across the front facing roof slope. The units protrude above the flat roof by approximately 600mm and in doing so they also rise above the ridgeline of the main roof. However, they sit below the chimney and parapet wall that separates the property from its neighbour at No. 1 St Georges Road. The units are used for cooling the rooms in the upper floors of the property, particularly during the summer months when temperatures can reach high levels.
8. By reason of their size, positioning and industrial appearance, the rooftop air conditioning units appear as incongruous and discordant additions to the roof, harmfully disrupting the rhythm, uniformity and cohesion described above, both in terms of the host property and the surrounding area. Their modern industrial appearance is in stark contrast with the more refined architectural and domestic characteristics of the host period property. It therefore harms that character. Furthermore, the external pipework adds to this sense of incongruity, cluttering the roof slope and significantly undermining the otherwise uniform appearance of the property within the street.
9. The lack of uniformity to the rear of the property and its adjacent neighbours, with various extensions of differing scale and design, does not detract from the fact that the air conditioning units are viewed as discordant and visually incongruous features in this residential setting. Such apparatus may be becoming more commonly installed for use at residential properties, this does not provide a justification for them being prominently placed on the roof of the appeal property, thereby drawing attention to their discordant appearance.
10. The development is visible, to varying degrees, from a number of public and private vantage points in the surrounding area, including at street level where one of the units and the associated pipework is clearly visible. The units can also be seen in views from the service lanes to the side and rear. Mature trees and vegetation reduce views of the development from the rear of properties

along Alexandra Road. However, during winter and early spring, when the trees are without full leaf coverage, the air conditioning units are likely to be prominent in views from the upper floor rear facing windows of these properties. Furthermore, it was apparent from my on-site observations that their rooftop position makes them visible in views from the upper floor rear facing windows of most properties along Southfield Road and in views experienced from the upper floor front facing windows of the properties opposite along St Georges Road. The intervening distances are not sufficient, in this case, to minimise the adverse effects that I have found.

11. Consequently, the development is readily apparent to such a degree that it has detrimental effect on the character and appearance of both the host property and its surroundings. In doing so, the development amounts to visually discordant features that adversely affect the visual amenity of neighbouring residents.
12. The neighbouring residents at numbers 1 and 5 are unlikely to experience prominent views of the development from within their properties, and the scale and positioning of the units would not result in any overbearing effects to any neighbouring residents. Nevertheless, these matters do not detract from my initial findings in relation to this main issue.
13. Bringing all these points together, I conclude that the development is harmful to the character and appearance of the host property and the surrounding area. Therefore, the development is contrary to Policy D3 of the London Plan 2021 and Policies 7.4 and 7B of the Ealing Development Management Development Plan Document 2013 which together, amongst other things, requires a design-led approach with new development complementing local character and external fittings and materials complementing the existing building and not impairing the visual amenity of surrounding users.

The alternative scheme

14. In the event that I find the development to be harmful and I am minded to dismiss the ground (a) appeal and refuse planning permission, the appellant has put forward an alternative scheme to reposition the air conditioning units. While this has been advanced as part of their ground (f) appeal, it is appropriate for me to consider this pursuant to ground (a).
15. The proposed alternative scheme would see both air conditioning units repositioned adjacent to each other on the flat roof and alongside the existing chimney stack on the north side of the roof. It is also suggested that the piping would be relocated to run down the side of the parapet wall and alongside the existing black drainpipe. It seems to me that this alternative proposal can reasonably be regarded as part of the scheme that constitutes the breach of planning control.
16. Clustering the units together adjacent to the chimney stack and tucked behind two existing satellite dishes would reduce their visual presence in views from ground level along the street. However, the units would still be visible in views from the rear and, to a lesser degree, in views from the upper windows of properties opposite along St Georges Road. Furthermore, insufficient details of the routing of the external piping have been provided, and, therefore, I cannot be certain that its repositioning would be acceptable in visual terms.

17. For these reasons, I am not convinced that this alternative scheme would overcome the harm I have identified or the associated conflicts I have cited with the development plan.

Other Matters

18. The Council does not cite any concerns in relation to noise emitting from the air conditioning units and I have not been presented with any objection from Environmental Health Officers. Accordingly, there is no substantial evidence before me to lead me to a different conclusion in this regard. I also acknowledge that there would be no loss of privacy to neighbouring occupiers. Furthermore, I note that the appeal property is not a listed building and is not located within a conservation area. However, these matters do not weigh in favour of the appeal.
19. In support of the appeal, my attention has been drawn to an air conditioning unit installed on the roof of No. 156 Southfield Road. However, the Council has advised that it has not granted permission for this unit, but it accepts that the unit is likely immune from enforcement action due to the passage of time. In any case, this limited example does not provide a precedent for similar development that is found to be harmful.
20. The appellant suggests that the air conditioning units are of a similar scale and appearance to an air source heat pump that could be installed in a similar position on the roof as permitted development. They also point out that the combined volume of the two air conditioning units is significantly less than the size of an air source heat pump that could be installed as permitted development. Moreover, it is argued that as the UK moves towards net zero in 2050, the current housing stock will need to be retrofitted with energy efficient, zero carbon technologies including air source heat pumps that could change the roofscape of many terraced houses in Ealing.
21. Nevertheless, the fact remains that the development, in this case, relates to the installation of air conditioning units. Accordingly, this does not represent a realistic or probable fallback position that would amount to a material consideration in support of the appeal.
22. Furthermore, I note the letter of support from a resident who lives in a property directly opposite the appeal property on St Georges Road. However, neither this nor any of the other matters raised in support of the appeal outweigh or alter my conclusion on the main issue in this case.

Ground (a) conclusion

23. I have found the development to be causing harm to the character and appearance of the host property and the surrounding area. The alternative scheme advanced by the appellant does not substantially alter my findings in this regard and therefore it does not warrant a grant of planning permission. Accordingly, the proposals are contrary to the above cited policies of the development plan and no material considerations of sufficient weight have been advanced to overcome this.
24. Therefore, for the reasons given, I conclude that the appeal on ground (a) should fail, and that planning permission should be refused in respect of the deemed planning application.

The appeal on ground (f)

25. This ground of appeal is that the requirements of the notice exceed what is necessary to remedy any breach of planning control.
26. The appellant's case on ground (f) amounts to the submission of an alternative scheme to reposition the air conditioning units on the roof. I have dealt with this as part of my consideration of the ground (a) appeal, having explained why this would be unacceptable.
27. Beyond this, no lesser steps are advanced in favour of the ground (f) appeal and therefore it must fail.

Overall Conclusion

28. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal 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.

J M Tweddle

INSPECTOR