



Appeal Decisions

Site visit made on 19 February 2024

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal A Ref: APP/M4320/C/23/3326344

38 Blundell Road, Hightown, Liverpool L38 9EQ

- The appeal is made by Mr Matt Agrimi against an enforcement notice issued by The Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 4 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of seven (7) no. air conditioning units to the side of the dwellinghouse.
- The requirements of the notice are: You must remove the seven (7) no. air conditioning units to the side of the dwellinghouse as shown cross hatched on the attached plan.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: 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.

Appeal B Ref: APP/M4320/C/23/3326345

38 Blundell Road, Hightown, Liverpool L38 9EQ

- The appeal is made by Mrs Stephanie Amanda Agrimi against an enforcement notice issued by The Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 4 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of seven (7) no. air conditioning units to the side of the dwellinghouse.
- The requirements of the notice are: You must remove the seven (7) no. air conditioning units to the side of the dwellinghouse as shown cross hatched on the attached plan.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: 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.

Preliminary Matter

1. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeals in light of the revised Framework. As there is no change in the revised Framework relevant to the appeals, it has not been necessary to seek comments from the parties on the revised version.

The ground (a) appeals and the deemed planning application

Main issue

2. The main issue is the effect of the development on the living conditions of the occupants of the neighbouring residential properties, in particular 36 Blundell Road, with regard to noise.

Reasons

3. The air conditioning units are situated adjacent to the boundary timber fence with 36 Blundell Road. Although No 36 is set back from the boundary fence, it has several windows in the elevation facing it, which serve habitable rooms.
4. At the time of my site visit, none of the air conditioning units appeared to be in active use. Although the Council has provided me with details of the make and model of the units (5 x Daikin RXM 35R9 units and 2 Daikin RXM60R units) there is no evidence before me of how much sound the units generate. The Council confirm their Environmental Health team reviewed a noise report submitted with the planning application for the units¹ and found there to be a number of inadequacies and shortcomings with the report such that it failed to demonstrate the units would not cause unacceptable harm to neighbouring residents. Although I have not been presented with this noise report, the appellants do not dispute the Environmental Health team's findings.
5. Given the number of units, the fact they are clustered together and their proximity to No 36, it is reasonable to conclude that they would generate a level of noise that would be discernible to the occupants of No 36. The noise generated would likely be particularly discernible at night and during the summer months when the units are used more frequently and the neighbouring occupants may have their windows open. Such noise could unduly disrupt their sleep during the night.
6. The appellants state they are designing an acoustic enclosure to go around the units. However, there is no evidence of such an enclosure before me to consider whether or not it would adequately mitigate any unacceptable noise generated by the air conditioning units.
7. Although not advanced by the appellant, I have nevertheless considered the imposition of a condition requiring an enclosure to be installed to reduce noise. However, in the absence of any evidence regarding the level of noise generated by the units, or a possible enclosure design, I am not sufficiently satisfied that such an enclosure would adequately mitigate the harm.
8. I find therefore, based on the evidence before me, it has not been sufficiently demonstrated that the air conditioning units would not have an unacceptably harmful effect on the living conditions of the occupants of neighbouring residential properties, particularly No 36, with regard to noise. As such, the development is contrary to Policies HC3 and EQ4 of the Sefton Council Local Plan 2017, which, amongst other matters, seek to ensure development protects the living conditions of residents from significant noise impacts. It would also fail to comply with paragraph 135 (f) of the Framework, which seeks to promote a high standard of amenity for existing users.

¹ Council reference DC/2022/02397

Other Matters

9. The appellants contend that the air conditioning units were only noted by the Council officers during a site visit for something else and that they assume no neighbours have complained about the noise. Even if that is the case, I have considered the effect of the development on existing and future occupants of neighbouring properties.

Conclusion on the ground (a) appeals and the deemed planning application

10. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to either the ground (a) appeals against the enforcement notice and the deemed application. Therefore, the ground (a) appeals fail.

The ground (g) appeals

11. This ground of appeal is that the period for compliance is unreasonably short. The appellants argue that two months is not sufficient time to arrange for an engineer to remove the air conditioning units as they are too busy installing them during the summer months. However, whilst that may have been the case when the enforcement notice (the notice) was issued in July, this argument holds very limited weight now. As it is no longer summer, I consider two months to be a reasonable period of time to comply with the requirements of the notice.
12. The ground (g) appeal fails.

Conclusion

13. The appeals are 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.

A Walker

INSPECTOR