



Appeal Decision

Site visit made on 5 March 2024

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/U5360/C/23/3325052

122 Cazenove Road, Hackney, London N16 6AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Shulom Cik of Palmcourt Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 18 May 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the installation of air conditioning units to the west facing elevation and the installation of air conditioning units on the east facing elevation.
- The requirements of the notice are to:
 1. Remove the all air conditioning units and associated fixtures, as shown in Appendix 1¹;
 2. Remove the all air conditioning units and associated fixtures, as shown in Appendix 2;
 3. Make good all damage to the Property resulting from the removal of the unauthorised works listed above;
 4. 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: 2 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Summary Decision: Planning permission is refused and the enforcement notice is upheld with corrections and variations.

The Notice

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice (the Notice) in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The Notice contains some minor typographical errors. The allegation refers to the installation of air conditioning units 'to' the west elevation, and 'on' the east elevation. While this is a minor matter, there is no reason for a difference in

¹ Appendices 1 and 2, here, are references to appendices to the enforcement notice.

wording, and I shall correct the allegation such that the word 'on' is used in both cases. Requirements 1 and 2 both begin "remove the all air conditioning", but the word 'the' is either superfluous or should be placed after the word 'all'. I shall correct the Notice by removing the word 'the' from both of these requirements.

3. It is important that the requirements reflect the allegation. The allegation in this case refers to the east and west elevation, whereas the requirements refer to drawings at appendices 1 and 2 to the Notice. I shall amend the requirements to clarify that the air conditioning units are on the east and west elevations, although I shall retain the reference to the appendices in case there are further air conditioning units on these elevations further into the site that are not intended to be targeted by the Notice.
4. The 4th requirement requires removal of materials, waste and the like, from the property and its premises. 'Property' is a defined term within the Notice and refers to the building and the land about it. The first letter should, therefore, be capitalised. In doing so, this ensures that the requirement refers to all of the land about the building such that further reference to 'its premises' is superfluous and should be deleted for clarity.
5. These corrections would simply add clarity and precision and not materially change the Notice, so no injustice will arise to either party.

Ground (a)

6. An appeal on ground (a) is that planning permission ought be granted for the matters alleged in the Notice. The main issues are the effect of the development on the character and appearance of the Northwold and Cazenove conservation area, the living conditions of the occupiers of No 120 Cazenove Road with regard to noise and disturbance, and the benefits that may arise from the development for users of the site.

Character and appearance

7. The Northwold and Cazenove Conservation Area Appraisal 2010 describes how the area was developed as a Victorian Suburb. Evidence of its development at that time appears to me to be the most important contributor to its significance. Cazenove Road is described as one of the grandest streets in the conservation area that originally contained very few houses of which No 122 was one. As a large villa, No 122, therefore contributes to the understanding of the history of the area and the significance of the conservation area. Although it is no longer in residential use, viewed from the street, the building retains the appearance of an elegant, substantial house and therefore also contributes positively to the character and appearance, and special architectural and historic interest of the area.
8. Despite its grand origins, many of the buildings along Cazenove Road have been heavily altered. A number of residential properties have been subdivided and various institutional uses now occupy some of the older buildings, as well as more modern ones. This has led to the addition of some visual clutter, including a number of air conditioning units and other paraphernalia.
9. Air conditioning units are particularly visible at a high level on the road facing elevation of the building opposite the appeal site. However, that building is a more modern one, whereas No 122 maintains its historic elegance, with

careful, integral detailing revealing its original architectural style. While air conditioning units have been added to some other older buildings, they are not so numerous as to make this an established part of the road's appearance, or detract heavily from those buildings.

10. The air conditioning units at No 122 have been installed in horizontal lines, that to some extent reflect the regimented architecture of the host building. However, they are bulky additions that protrude starkly, dominating the plain, simple external side walls of the building. They detract significantly from the building's architecture and harm its appearance.
11. The building sits close to its neighbour at No 120 and this shields most of the air conditioning units on that side from long views. The frontmost one is, however, visible for some distance, and the remaining units are clearly visible in closer-range views. The other elevation is much more exposed due to a wide gap of green space to the rear of the building at the neighbouring Nelson Mandela House. There are some trees within these views, but, from the street, the air conditioning units are seen beneath the canopy line. They are particularly exposed in the winter months where there is no foliage on some of the trees.
12. It may be possible to add some form of enclosure to the units, so that they did not have such a stark or utilitarian appearance. Nevertheless, the options that have been suggested by the appellant would still result in incongruous additions to the building, given their position well above the ground and I am not aware of any alternative solution that would have a lesser effect. Along with the array of wires and ducts that accompany the air conditioning units, the development significantly disrupts the architectural poise of the building.
13. Given the importance of the building to the conservation area, I find that the air conditioning units cause less than substantial harm to its significance as a Victorian suburb, and fail to preserve or enhance its character and appearance. This results in conflict with those aims of Policies D3 and HC1 of the London Plan 2021, and Policies LP1 and LP3 of the Hackney Local Plan 2020 (HLP) that seek to ensure that development responds to the locality, respects and conserves the significance of heritage assets, including the preservation or enhancement of the character and appearance of conservation areas.
14. The National Planning Policy Framework (the Framework) and HLP Policy LP3 require that less than substantial harm to the significance of a designated heritage asset must be weighed against the public benefits of the development, and I shall return to this later in my decision.

Living conditions

15. The air conditioning units facing No 120 are very close to residential first floor opening windows in that building. A noise assessment has been provided that confirms that the units are audible above background noise levels, but suggests that, with mitigation, they would not cause harm to the living conditions of the neighbouring residents.
16. While it appears to have been no concern of the Council, and so may make no material difference, I note that background noise was measured at a location to the front of the building, away from the air conditioning units and affected windows. No justification appears to have been given in the noise assessment

for this choice of location. However, even if the survey does provide an accurate background noise level against which to assess the impact of the units, the assessment of likely noise is based upon 5 units. There are 6 present on the side facing No 120.

17. Given that there is additional noise emitting plant than has been assessed, I can give very little weight to the conclusions of the noise assessment that unacceptable disturbance could be avoided through mitigation. It has been suggested that the constant noise emitting from the units would be less disturbing than variable noise that may emanate from open classroom windows, but there is no robust evidence to support this claim. On this basis, even with controls over operating hours, I find that harmful disturbance to the living conditions of neighbouring residents would arise.
18. Therefore, the proposal would conflict with those aims of LP Policies D3 and D13, and HLP Policy LP2 that seek to ensure development prevents or mitigates the impacts of noise so as to avoid significant adverse noise impacts on amenity, health and quality of life.

Benefits

19. The air conditioning units have been installed on educational premises attended by children. Children share a protected characteristic defined within the Equality Act 2010. I also understand that the school is attended by children who share a protected characteristic of religion. I have, therefore, had due regard to the Public Sector Equalities Duty (PSED) outlined in that Act. This includes to eliminate discrimination, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The United Nations Convention on the Rights of the Child also dictate that the best interests of the children should be a primary consideration.
20. The air conditioning units control the climatic conditions within the building, offering an improved learning environment and benefits to the children. Such would, undoubtedly, be in their best interests. I am also mindful that children are required to attend school and so may be unable to avoid being in classrooms in the way that adults might. The availability of alternative education establishments for people wishing to educate their children in line with their religious beliefs may also be limited, so if it was deemed that the accommodation was of poor quality, those working in and attending the school may find themselves indirectly discriminated against relative to people who do not share their protected characteristic.
21. Nevertheless, while I appreciate that the units have been sited at a height that would facilitate pedestrian movement around the building at ground level, it has not been shown that these units, sited as they are, are the only option available to provide a good classroom environment. Accordingly, I attribute limited weight to these benefits of the particular development alleged in the Notice.

Other matter

22. The reasons for issuing the Notice also refer to a conflict with LP Policies D1 and D4, but these appear to be more relevant to plan making than decision

taking, and mechanisms for ensuring appropriate design quality. I find no conflict with them in respect of this appeal.

Planning balance

23. The air conditioning units fail to preserve or enhance the character and appearance of the conservation area and harm its significance. The conservation of heritage assets is a matter of considerable importance and, in accordance with the Framework, should be afforded great weight.
24. The Framework, and HLP Policy LP3 indicate that where there is less than substantial harm to the significance of a designated heritage asset, this must be weighed against the public benefits. The improvement of educational facilities is a public benefit. However, having due regard to the PSED and mindful of the importance of the best interests of the children, these considerations are only of limited weight in this case for the reason I have given. They do not outweigh the less than substantial harm to the significance of the heritage asset.
25. The harm to the heritage asset and living conditions of neighbouring residents results in conflict with the development plan. Other material considerations, including the benefits, do not indicate that a decision should be made otherwise than in accordance with it. Therefore, planning permission should be refused and the appeal on ground (a) should fail.

Ground (f)

26. Ground (f) is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters alleged in the Notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. The purpose of the Notice in this case is to remedy the breach and so consideration of the ground (f) appeal is limited to whether lesser steps would achieve that aim. The appellant has suggested that enclosures could be placed around the units to remedy the harm, and I have considered this as part of the ground (a) appeal. However, such enclosures, even if they were acceptable, would not remedy the breach of planning control, which is the installation of the units. Accordingly, the appeal on ground (f) must fail.

Ground (g)

28. The appeal on ground (g) is that any period specified to comply with the requirements of the Notice falls short of what should reasonably be allowed. It is not yet known whether there is an available, acceptable alternative solution. However, the appellant suggests that additional time is required to make planning applications for one. Even if a successful planning application were made the day after this Decision, it is unlikely to be determined in time for replacement facilities to be in place before the expiration of the time period.
29. At the time the appeal evidence was prepared, the Notice would have required removal of the units shortly before the winter. However, given the time of my decision, the Notice will now require removal of the units around the start of the summer season.

30. I am mindful that the presence of units through the summer will prolong disturbance for the neighbouring residents, but I am also mindful of the best interests of the children at the school, which is a primary consideration. Therefore, I find that it would be appropriate to extend the period for compliance to fall in September, such that the hottest weather should have passed and work can be well advanced on agreeing and installing any alternative prior to the summer of 2025.

31. Therefore, I will extend the period for compliance to 6 months, and the appeal on ground (g) succeeds to this extent.

Conclusion

32. For the reasons given above, some corrections are required to the Notice in the interests of clarity. For the reasons given, I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act. However, the period for compliance with the requirements of the Notice falls short of what is reasonable. I shall, therefore, correct and vary the Notice prior to upholding it.

Formal Decision

33. It is directed that the enforcement notice is corrected and varied by:

In Section 3 'The breach of planning control alleged':

- Delete the word "to" and replace with the word "on".

In Section 5 'What you are required to do':

- In paragraph 1, delete the word "the". After the word "fixtures", add the words "from the west facing elevation".
- In paragraph 2, delete the word "the". After the word "fixtures", add the words "from the east facing elevation".
- In paragraph 4, delete the words "property and its premises" and replace with the word "Property".

In Section 6 'Time for compliance':

- Delete the text "2 months" and replace with the text "6 months".

34. Subject to the corrections and variation, 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.

M Bale

INSPECTOR