



Appeal Decisions

Site visit made on 26 February 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19TH APRIL 2024

Appeal A Ref: APP/H5960/C/23/3324712

Appeal B Ref: APP/H5960/C/23/3324713

35 Parkstead Road, LONDON, SW15 5HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Pramin Raut (Appeal A) and Ms Tonje Eide (Appeal B) against an enforcement notice issued by London Borough of Wandsworth.
- The enforcement notice was issued on 18 May 2023.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 4 years, the unauthorised installation of an air source heat pump at the first-floor rear elevation at the Property.
- The requirements of the notice are: 1. Remove the unauthorised air source heat pump from the first-floor rear elevation of the Property; Or 2. Relocate the air source heat pump to the ground floor rear elevation so that it accords with the limitations and conditions of Permitted Development Rights under Class G, Part 14 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) 2. Remove from the site all debris arising from compliance with either step 1 or 2.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) of the Town and Country Planning Act 1990 as amended. The period for compliance with the requirements is three (3) months.

Appeals A and B Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The Council has advised that the site is subject to an Article 4 Direction which removes permitted development ('PD') rights for 'External alterations to houses which would be visible from the street'. However, whilst the appellant makes submissions that the air source heat pump is not visible from the street, there is nothing to suggest that the Council considers that the Article 4 Direction affects PD rights for the installation of air source heat pumps. I determine the appeal on that basis.

The appeal on ground (c)

2. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probability.
3. The appellant submits that the appeal development is PD pursuant to Schedule 2, Part 14, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('Class G'). Class G grants planning permission for '*The installation, alteration or replacement of a microgeneration*

air source heat pump (a) on a dwellinghouse or a block of flats; or (b) within the curtilage of a dwellinghouse or a block of flats, including on a building within that curtilage'.

4. The Council accepts that the appeal development complies with all conditions and limitations in Class G save for conditions G.3(b) and (c). Condition G.3(b) stipulates that *'the air source heat pump is, so far as practicable, sited so as to minimise its effect on the external appearance of the building'*. Condition G.3(c) then requires that *'the air source heat pump is, so far as practicable, sited so as to minimise its effect on the amenity of the area'*.
5. The appellant's view is that the air pump has been sited, so far as practicable, to minimise these effects. The appellant explains that for optimum functioning, the pump should be located as close as possible to the hot water cylinder, which would mean installing the pump in the front garden. The appellant was advised by Council officers against installation to the front of the property, and that an air source heat pump could be installed under Class G PD rights provided that it was installed at the rear of the house. The heat pump was thus installed on the first floor rear elevation as the next best option in terms of proximity to the hot water cylinder. The appellant believed this to be in line with officer advice.
6. The appellant submits that installation at ground floor level at the rear of the property would double the distance between the pump and the cylinder 'drastically' reducing its efficiency. The appellant also highlights that the property's raised garden means that installation at the rear ground floor of the property would result in lost efficiency either through obstruction of cold air outflow, or through further increasing the distance to the hot water cylinder and heat loss from exposure of the connecting pipe to the ambient outdoor environment.
7. In my view, the wording 'minimise' and 'so far as practicable' in G.3(b) and (c) seek to strike a balance between on the one hand, effects on the external appearance of the building and the amenity of the area, and on the other hand practical considerations including those related to the efficiency of the pump's operation. The appellant cites environmental benefits in relation to the installation of air source heat pumps but these cannot be given weight in the absence of an appeal on ground (a). I do though bear these in mind in my consideration of the balance between practical and visual/amenity considerations below since they no doubt informed the introduction of the Class G PD right.
8. As regards the G.3(b) condition, in my view the air pump has not been sited so as to minimise its effect on the external appearance of the building. It is prominently located at first floor level on the rear elevation and so is clearly visible from the public domain in views from Dover House Road.
9. Turning to the G.3(c) condition, the Council's concern relates to the living conditions of neighbouring residents as regards noise and disturbance. The appellant outlines that the pump unit is sited some five metres from bedrooms of neighbouring residents and provides details of the air pump specification, indicating that it is inaudible from neighbouring bedrooms (albeit with soundproof barriers in place).

10. The stipulation in G.3(c) is though that the pump is *sited* so as to minimise, so far as is practicable, the effect on the amenity of the area. In my view, siting at first floor level here is unlikely to minimise the effect on the amenity of the area in view of proximity to neighbouring bedrooms where occupants would be more sensitive to even low levels of noise and disturbance.
11. Bearing in mind the submission that the air pump is inaudible from neighbouring properties, an argument could theoretically be made that this is enough to mean that the siting is adequate to minimise the effect on local amenity. However, the Council raises the issue of increased audibility as the unit ages and I have no detailed evidence to indicate that there would not be an increase in noise and/or vibration over time. Accordingly, evidence that the unit is currently inaudible cannot obviate the need for it to be sited so as to minimise the effect on local amenity.
12. I am mindful though that the G.3(b) and (c) conditions both state that effects should be minimised only 'so far as practicable'. The appellant has emphasised efficiency losses from an alternative rear location, and I note that the appellant's installer indicates that they 'always suggest' installation as close as possible to the hot water cylinder, and that installation away from the house should be avoided. However, evidence from the installer is that such reductions in efficiency can be minimised and just not 'reduced to zero'.
13. It therefore seems that a ground floor rear location would be 'practicable' albeit that additional measures might be necessary to enhance efficiency. Consequently, the pump unit has not been sited so as to minimise, as far as practicable, the effects on the external appearance of the building and amenity of the area. I find then that conditions G.3(b) and (c) are not complied with and so the appeal development does not represent PD under Class G. It is not lawful and the ground (c) appeal fails.

The appeal on ground (f)

14. This ground of appeal is that the requirements of the notice exceed what is necessary.
15. S.173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case gives an alternative option to move the air source heat pump to a ground floor location suggests that its purpose is to remedy any injury to amenity; compliance with the notice would not remedy the breach of planning control or restore the land to its former condition.
16. The appellant proposes additional measures to remedy the injury to amenity identified by the Council in the enforcement notice, namely harm to the appearance of the appeal building and to the significance of the Dover House Estate Conservation Area, as well as on the living conditions of neighbouring occupants with regard to noise and vibration. These measures are the addition of soundproofing barriers in keeping with the property's brickwork and painting/wrapping of the air source heat pump unit so that it blends in with the surrounding brickwork.

17. Whilst soundproofing barriers designed to match the brickwork, in views from Dover House Road, would mean that the industrial appearance of the air pump would no longer be visible, nonetheless, this would remain apparent from neighbouring gardens and painting the unit a matching colour/use of a vinyl wrap would do little to reduce its visually intrusive industrial appearance on the historic appeal building. Even with these measures in place, it would remain a visually jarring first floor level projection in views from Dover House Road. I also have no detailed evidence to indicate the effectiveness of any such barriers in terms of reducing noise and vibration to neighbouring occupants if this were to become louder over time as the unit ages.
18. The measures proposed do not therefore represent a lesser step that would remedy the injury to amenity and accordingly, the ground (f) appeal does not succeed.

Period for compliance

19. Whilst the appellant has not made an appeal on ground (g) to extend the period for compliance, it seems likely that the appellant may wish to change the location of the heat pump per the second option in the requirements. Based upon evidence submitted related to the practicalities of changing the location of the pump, which might also necessitate some internal reconfiguration, I consider that a 6 month period for compliance would be reasonable in the circumstances and I shall vary the notice accordingly.

Conclusion

20. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

21. It is directed that the enforcement notice is varied by in paragraph 6 deletion of the wording 'Three (3)' and substitution with the wording 'Six (6)'.
22. Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

V Bond

INSPECTOR