



Appeal Decision

Site visit made on 17 June 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 17 September 2024

Appeal Ref: APP/V1260/D/24/3337213

85 Mudeford, Christchurch BH23 3NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant planning permission.
 - The appeal is made by Nicolas Roach against the decision of Bournemouth Christchurch and Poole Council ('BCP').
 - The application is ref. 8/23/0306/HOU.
 - The development proposed is described on the application form as the 'installation of Air Source Heat Pumps'.
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Decision

1. The appeal is allowed and planning permission is granted for 2 air source heat pumps ('ASHPs') at 85 Mudeford, Christchurch BH23 3NJ in accordance with the terms of application ref. 8/23/0306/HOU, subject to the conditions below.

Preliminary matters

Statutory context

2. The development relates to grade II listed Mudeford House, no. 85.¹ Neighbouring no. 87, to the east in the direction of Christchurch Quay, is grade II listed Mude Cottage.² Both are within the Mudeford Quay Conservation Area ('MQCA'), focussed principally around the Quay and stretch of coastline by it. I have therefore approached the appeals in the context of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBCA Act').
3. Section 66(1) of LBCA Act requires that I pay special regard to the desirability of preserving listed buildings, their settings, or any features of special architectural or historic interest they possess. Similarly, section 72(1) of the LBCA Act sets out how special attention shall be paid to the desirability of preserving or enhancing the character and appearance of conservation areas.
4. The appeal is under section 78 of the 1990 Act, which relates to planning appeals (rather than section 20 of the LBCA Act which relates to works for which listed building consent is sought). As reflected by the comments of BCP Urban Design and Conservation of 5 June 2023, 'it is unclear whether the installation of the two ASHPs would necessitate any changes to the existing structures (for example, the introduction of additional pipework and/ or internal units)'.

¹ List entry no. 1110091.

² List entry no. 1324666.

5. For clarity, however, no alterations to the historic fabric of the listed building are shown or described in the information before me. I was unable to discern any effect in that regard during my site visit. If listed building consent were to be required for associated works, that would be a matter for the appellant and BCP to address as necessary.
6. Notwithstanding an extensive history of alterations and additions to the listed building, there appears to have been no parallel application for listed building consent along with planning application ref. 8/23/0306/HOU. BCP's decision notice of 14 December 2023 in respect of application ref. 8/23/0306/HOU, moreover, focusses squarely on the implications of the scheme to the setting of nos. 85 and 87.

Policy context

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended requires that proposals are determined in accordance with the development plan unless material considerations indicate otherwise. On 1 April 2019 the former Councils of Bournemouth, Christchurch and Poole combined to form a single Authority. Existing development plan documents of former authorities remain. In this instance the development plan includes policies of the Christchurch and East Dorset Local Plan: Part 1- Core Strategy (adopted 28 April 2014, the 'CS'), and 'saved' policies of the Borough of Christchurch Local Plan (adopted originally in March 2001, the 'LP').
8. I have had regard to all relevant material considerations including the National Planning Policy Framework (updated 20 December 2023, the 'NPPF'), the Planning Practice Guidance ('PPG'), Historic England's guidance on 'Heat Pumps in Historic Buildings' (published 26 May 2023), and the Mudeford Quay Conservation Area Appraisal (published 2008, the 'MQCAA'). I understand that a review of the CS is underway, as is work towards a neighbourhood plan (albeit that both are yet at relatively early stages).

The development

9. Notwithstanding the description of development reproduced in the banner heading above, BCP's decision notice of 14 December 2023 describes the development for which permission is sought as 'retrospective application for Installation of 2no. Air Source Heat Pumps (AMENDED DESCRIPTION/PLANS)'. The application form, dated 2 May 2023, states that the installation of ASHPs was started without permission on 1 August 2022.
10. The expansive plot of Mudeford House cuts to the rear of the plot of Mude Cottage, increasing in width towards the water's edge (rather than being rectilinear). The plot of no. 89 is separated from that of no. 85 by the plot of no. 87. That interrelationship is shown on plan no. '20-1074-LOC'. Given the arrangement of plots here, no. 89 is therefore close to the location of the ASHPs. For comprehensiveness, no. 89A is to the east of Mude Cottage and north of no. 89 (appearing, relatively, a more recent property).
11. There is a representation of 30 May 2023 on behalf of the occupant of no. 89, prepared by Dan Roycroft of Atlas Planning Group. That indicates that heat pumps were installed in 'April/ May 2022', and appends a Noise Impact

Assessment of September 2022.³ There are representations before me in relation to Mude Cottage, no. 89A, and also no. 10 Hamilton Close, endorsing the representation of the occupant of no. 89.

12. The scheme has, however, been amended. It may well, therefore, be that the difference in dates given for the commencement of development above relates to the initial installation of heat pumps and their subsequent alteration. I understand that the original scheme was, around November 2023, amended to address BCP's concerns over noise (unwanted sound). In this decision, for brevity, I refer to the 'original' and 'amended' scheme in that context.
13. It is the amended scheme before me. As clarified by the appellant at appeal in response to my request, the plans illustrating the amended scheme are '20-1074-LOC', dated June/21, a 'Location and Block Plan', and '23.011-HGP-01-22-DR-A-2001', dated 'FEB 23', entitled 'Pool Plant Room Details'.
14. Confusingly, however, the reference number and date of the latter plan are the same as that illustrating the original scheme. Practically that poses a potential problem in respect of conditions were the appeal to be allowed.⁴ In the eventuality that permission were to be allowed, securing adherence to the amended plan could also be interpreted as applying to the original scheme.
15. Following that logic, with reference to NPPF paragraph 56, a condition in that respect would, notwithstanding that the scheme is retrospective, be imprecise. That would in turn bring into question whether permission could in actually be granted in the eventuality the scheme is acceptable. Consequently, at my request, a plan has been provided with a unique reference, plan no. 23.011-HGP-01-22-DR-A-2001 REVISION C, dated July 2024. That, along with the location plan referenced previously, now reflect the amended scheme.

Noise, relevant evidence

16. BCP's decision notice does not refer to noise. The associated officer report sets out, with reference to the appellant's evidence, that noise levels 'were deemed not to be excessive to the detriment of neighbouring properties living conditions'. That draws from the views of BCP Environmental Health (received 30 October 2023, the 'EH assessment').
17. The dates on which the scheme was implemented, revised and assessed are, however, complex. The appellant's evidence in respect of noise includes a Noise Impact Assessment of 25 September 2023, marked as 'Revision P01' (the 'NIAR').⁵ There is also a Noise Impact Assessment of 27 April 2023 (the 'NIA').⁶ The NIA is, however, marked as 'Revision P02'. That suggests that it is an update to the NIAR of 25 September 2023. It is not. The 'Revision P01' NIAR was, befuddlingly, produced after the 'Revision P02' NIA.
18. There is also a 'Project Note' of 22 June 2023 prepared on behalf of the appellant which addresses points made in the assessment commissioned by the

³ Impact Acoustics, ref. IMP7262-1

⁴ Notwithstanding article 7(1)(c) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended.

⁵ Vanguardia, ref. 0055609-VAN-RP-0002, Revision P01.

⁶ Vanguardia, ref. 0055609-0820-0-VAN-RP-01-02, Revision P02.

occupant of no. 89 referenced above.⁷ There is also a review of the foregoing by Clarke Saunders Acoustics of 10 August 2023.⁸ Nevertheless, only the NIAR of 25 September 2023, marked as 'Revision P01' relates to the amended scheme (anything beforehand to the original scheme).⁹

Noise, evidence availability

19. Via correspondence of 1 July 2024 BCP set out how, in the light of the amended scheme a site notice 'was erected on 19 September 2023 (amended description/ plans) allowing for further comments up to 4 October 2023'. That appears, incidentally, to conflict with the deadline for further comments given in BCP's officer report (11 October 2023).
20. Nevertheless in their correspondence of 1 July 2024, BCP explain how the NIAR 'was made public on 25 September 2023'. If that is correct, individuals would have had had some 10 days to comment on it. Via that correspondence BCP also attached a response of 4 October 2023 to the foregoing opportunity for further comments (again by Dan Roycroft). In brief that response remains critical of the substantiation behind the scheme in terms of noise.
21. As expressed in correspondence of 9 July 2024 at appeal, BCP were of the view that the foregoing procedure was sufficient to enable me to determine the appeal without prejudice to any party (including with reference the EH assessment). I disagreed, notably as the response of 4 October 2023 referenced in the preceding paragraph asks: 'where is the updated Noise Impact Assessment which takes into account the inaccuracies we have already highlighted in previous reps, and the new ASHP installed?'
22. The latter appears to be a reference to the NIAR, which BCP say was then available. In that context, in the interests of fairness, openness and impartiality, I could not be certain that my proceeding to determine the appeal would have been following suitable opportunity for public scrutiny.
23. I therefore asked BCP to re-consult to ensure that there had been fair opportunity for comment (both on the NIAR and plan no. 23.011-HGP-01-22-DR-A-2001 REVISION C). Via correspondence of 13 August 2024, BCP informed me of the intention to consult on Monday 18 August 2024. BCP prepared a notice of consultation dated 28 August 2024, with the consultation period running to 11 September 2024. I understand re-consultation took place on 19 August 2024.¹⁰
24. Via correspondence of 13 September 2024, BCP set out that no further representations had been received. In short, on the information now before me, I am satisfied that no party would be prejudiced by my proceeding to determine the appeal.

⁷ Vanguardia, ref. 0055609-0820-0-VAN-PN-01-00, Revision R00.

⁸ Ref. AS13185.230807.L1.

⁹ As is inherent in some of the information contained within those documents, and as confirmed by the Council and appellant at appeal.

¹⁰ BCP correspondence of 13 August 2024.

Main issues

25. The main issues are the effect of the development in respect of (i) the living conditions of those nearby in respect of noise, and (ii) in respect of historic significance.

Reasons

Noise

26. Notwithstanding the foregoing context, the absence of further representations in respect of the NIAR does not indicate that neighbours support the amended scheme. More broadly the existence or absence of objections is not a bellwether as to a scheme's acceptability.
27. Turning to the assess the noise implications of the scheme, the NIAR is stated to be prepared with reference to relevant British Standards 4142:2014+A1:2019 and 8233:2014.¹¹ In essence it reiterates some of the foregoing, in that following complains former ASHPs have been replaced by a 'single, quieter model, and a new directional duct system has been constructed on the roof of the plant room.' That is incorrect.
28. There is not now a single unit but instead 2. The NIAR also refers to 'Air Handling Units' ('AHUs'), but nowhere to ASHPs. The appellant has furthermore submitted a data sheet in respect of a 'Flotide PX30/32' unit. Dan Roycroft's correspondence of 4 October 2023 includes a photograph of packaging on site, presumably taken at the time the amended scheme was being undertaken, of an LG ARUM220LTE6. That is a different unit, inevitably with a different sound profile.
29. The NIAR, however, sets out that it assessed the amended scheme. In response to my request of 1 July 2023 the appellant confirmed on 3 July 2024 that two ASHP were installed at the time the NIAR was undertaken. BCP do not say otherwise. Moreover, as I understand it ASHPs are a species of the genus AHU. To address Dan Roycroft's observation, the Flotide PX30/32 appears to serves the swimming pool, another ASHP within louvred housing serving the rest of the property (which may be an LG ARUM220LTE6 or not).
30. There are, however, further ambiguities in the NIAR. The background noise level was assessed by the parking to no. 85 (the blue dot on NIAR figure 3). The noise level was monitored close to the south-western corner of the plot of no. 87, no. 87 annotated as the 'complainant's property' (the red dot on NIAR figure 3). Given the nature of plots here described above, the red dot is not the closest location to no. 89 within the plot of no. 85. I presume the reference to no.87 being the complainant's property should instead be to no. 89.
31. Furthermore NIAR Figure B-3 is a photograph of the 'new directional ducting on roof of plantroom' being constructed. However that does not tally with the size or location of the enclosure shown on plan no. 23.011-HGP-01-22-DR-A-2001 REVISION C or what I saw on site in that respect, particularly as the housing shown on the plans, and that which is in place, does not abut the a wall of the swimming pool building.

¹¹ Respectively 'Methods for Rating and Assessing Industrial and Commercial Sound', and 'Guidance on sound insulation and noise reduction for buildings'.

32. Whilst the foregoing make assessing the implications of the development challenging, they are not in critical to the integrity of the NIAR. Both the red and the blue dots are consistent with those locations in the earlier NIA (thereby enabling a relative assessment of the amended scheme compared to the original). I saw that the distance between the location of the ASHPs and the red dot is comparable to the distance between them and the nearest elevation of no.89 (with the nature of intervening buildings and boundary features being comparable also, if not more substantial, in relation to the interaction between the plot of nos. 85 and 89).
33. Figure B-3 to the NIAR inevitably relates to a scheme under construction, and I have assessed the development on the basis of plan no. 23.011-HGP-01-22-DR-A-2001 REVISION C. BCP do not contend that there is any divergence between what has been installed or constructed and that which is shown on the foregoing plan. Therefore for the purposes of this decision 'the development' reads as shorthand for both the amended scheme shown on that and as it stands. Again, were there to be any divergence between the two, that would be a matter for the main parties to address as necessary.
34. Turning to the findings of the NIAR, the modal background level at the blue dot, expressed in terms of LA90, _{15mins}, was found to be 37dB both during the day and night (the latter being 23:00 to 07:00). Therefore at 15 minute intervals, for 90% of the time, sound levels exceeded 37db. Rationally, however, the NIAR applied a sensitivity test to that.
35. That sensitivity test is, in summary, as the modal figure referenced above may not account for intervals of lower levels of sound. During the night, the 25th percentile, i.e. which sound is above 75% of the time, was found to be 25dB. The effects of the amended scheme are presented relative both to nighttime levels of 37dB and 25dB in order for effects to be accurately gauged.
36. In a comparable way to traditional means of heating properties, ASHPs work periodically or intermittently. The NIAR presents the results of assessment as if ASHPs were, however, operational continuously (something of a 'worst case' scenario). Similarly ASHPs work with different degrees of effort. With that in mind the 'peak' mode of operation would generate a sound level of 49dB, the 'typical' mode 44dB, and the 'night mode' 44dB.¹²
37. The foregoing figures are, however, at or near source. In terms of the assessment position, namely the red dot at NIA figure 3, the calculated specific sound level would be lesser (40, 39 and 23dB respectively), with reference to British Standard 4145:2014+A1 2019. If 'façade correction' is applied to account for sound reflecting from facades nearby, the foregoing figures might be adjusted downwards further still (by some 3dB).¹³
38. In that context there would be little, if any, meaningful difference resulting from the operation of the ASHPs as assessed relative to the prevailing background level (setting aside any attenuation from partially open windows at neighbouring properties). That, incidentally, compares favourably to the

¹² NIAR, table 4-2.

¹³ Ibid.

original scheme, which returned daytime sound levels of 46dB LAeq, 1 hour and nighttime, 47dB LAeq, 15 minutes, noting that British Standard 4142:2014 sets out that a 5dB difference, sound being graded logarithmically, would be an indication of the potential for adverse effect.¹⁴

39. There is, however, another angle to noise in this instance (setting aside any previous conditions which applied to development on site in that respect). In certain circumstances certain ASHP are permitted development by virtue of Schedule 2, Part 14, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), in that specific planning is not required for their installation.
40. If installed pursuant to those GPDO provisions, ASHP must accord with the Microgeneration Certification Scheme planning standards ('MCS'). Although those GPDO provisions do not apply to listed buildings and allow for only a single ASHP, it is relevant to note that the MCS planning standards limit sound or noise generated by ASHP to 42dB(A) at neighbouring properties.
41. Practically adherence to the findings of the NIAR as above or MCS planning standards, whichever is the lesser, could be secured via condition were the scheme acceptable as a whole. Consequently, summarising the foregoing and subject to such a condition, the development would not conflict with the relevant provisions of CS policy ME5 or NPPF paragraph 13.f) which, in summary, seek to ensure that development integrates appropriately with neighbouring living conditions including in respect of noise.¹⁵
42. By consequence of the foregoing reasoning relative to background conditions, logically there would no conflict with criterion 5 to saved LP policy BE4 in respect of the prevailing nature of the MCA in respect of sound or noise.

Heritage

43. It is difficult to get a precise fix on BCP's position in respect of heritage. Their decision notice attributes harm flowing from the 'location of the heat pump, the utilitarian design of the proposed enclosure and the introduction of additional units within the enclosure, resulting in a negative visual impact'. As above, however there are only 2 heat pumps, one housed in the enclosure shown on plan no. 23.011-HGP-01-22-DR-A-2001 REVISION C and the other beath the boardwalk to the rear of the swimming pool. The development is expressly for only 2 ASHPs, not more.
44. The Urban Design and Conservation officer's response to application ref. 8/23/0306/HOU also sets out that: the concealment of the ASHPs in a plant room to minimise their visual and noise impact could be acceptable and in line with Historic England's *Installing Heat Pumps in Historic Buildings* guidance.' It appears, therefore, that the kernel of BCP's objection relates to the details of the enclosure itself. As noted earlier, there is no indication that what has been built diverges from the plans (and therefore references to what has been done or to the plans is effectively one and the same). For 4 principal reasons, I am conversely of the view that no heritage harm results from the development.

¹⁴ Noting that the lack of tonality of the amended scheme is noted in NIAR paragraph 5.1.

¹⁵ Noting criterion 5 to saved LP policy BE 4 sets out how noise should not detract from character and appearance.

45. In the abstract 'utilitarian' additions to a listed building such as Mudeford House, a grand neoclassical early nineteenth century property,¹⁶ might be incongruous. Although less grand, Mude Cottage is also of refined design (including on account of hood mouldings around windows within its principal elevation). As with other historic properties nearby, both represent something of a late Georgian and early Victorian affluent seaside expansion here. It is a truism, however, that historic buildings need to evolve somewhat.
46. Set against that context, in one sense the enclosure is designed for function (to attenuate sound and to shield one ASHP from the elements). However, firstly, it cannot fairly be described as utilitarian accorded its ordinary meaning of useful or practical rather than attractive. Any element of the built environment is, after all, to serve some form of purpose. The enclosure is principally of timber, with a louvred design, and finished white consistent with walls by it. Unlike many housings for plant and equipment it is neither of standardised nor principally functional aesthetic, but has rather been crafted to fit its particular context. In materials, understated design, and finish it is consistent and unobtrusive in its surroundings.
47. Secondly the enclosure is, all told, a very modest structure.¹⁷ At its highest it reaches to around the level of the boundary wall with no. 87, and far lower than buildings either side of it (to which I will return). As aptly noted in the MQCAA, Mudeford House is 'on a grand scale'. Physically both ASHPs and the enclosure to one, might fairly be characterised as almost *de minimis* additions relative to the original form of Mudeford House and its expansive plot (or indeed relative to the form and plot of Mude Cottage).
48. More broadly, and thirdly, the MQCAA notes how the area hereabouts is characterised by the prevalence of substantial brick boundary walls and established, mature planting.¹⁸ That creates a strong sense of enclosure and intimacy, in contrast to the comparative openness across the water towards the Quay. That character is clearly reflected in the plots of nos. 85, 87, 89 and 89A. Whilst significance and visibility are different concepts, there is no meaningful intervisibility between the ASHPs or enclosure and original elements of either nos. 85 or 87. The development is largely concealed. The development is of such limited extent so as not to be appreciable in any longer-distance views either (if there would be any visibility whatsoever).
49. Fourth, plan no. 23.011-HGP-01-22-DR-A-2001 REVISION C shows how the enclosure is sandwiched between an existing 'swimming pool building' and 'summer house'. The former is substantial and projects to the rear of the historic form of no. 85, set close to the boundary with no. 87. BCP's officer report lists 14 applications for either listed building consent or planning permission related to Mudeford House dating back to 2002. Of those, the swimming pool relates, to some extent, to 4.¹⁹ The summer house, also far

¹⁶ The driveway wall to which contains a plaque referring to John Brian Keane Lieutenant General, commander in chief in Jamaica 1833, and in Bombay, Cabul in 1840. Whilst there is no evidence as to any associative connection in that respect, in era and architectural style, historic elements of Mudeford House are consistent with conspicuous architectural display and preferences of that era.

¹⁷ Noting, for comprehensiveness, that the ASHP serving the swimming pool is barely perceptible (being set beneath a boardwalk and essentially occluded from view by domestic planting).

¹⁸ Page 25.

¹⁹ 8/21/0677/HOU and 8/21/0678/LB, both approved 20 December 2021, 8/11/0261 and 8/11/0262, both approved 30 August 2011.

taller and more substantial than any aspect of the development, relates to planning permission secured in 2019.²⁰

50. There is no indication in the evidence before me, aside from in respect of the development at issue in this appeal, that anything at the appeal site unauthorised or subject to enforcement (whether investigation or action). The ASHPs are next to substantial elements of Mudeford House constructed in recent years, rather than there being any appreciable visual relationship to the historic fabric or appearance of the property.
51. Summarising the foregoing, the development is appropriately designed, modest, enclosed and relates to substantial recent elements of the property. There is no meaningful effect on elements of the historic environment, or in respect of the special interest or significance of nos. 85, 87 or the MQCA more broadly (touched upon throughout this main issue insofar as relevant to this appeal). In summary what BCP have described in their decision notice is change, whereas in my view that change is not detrimental.
52. I therefore conclude that the development accords with the expectations of statute referenced above and the relevant provisions of CS polices HE1 and HE2, of LP policies BE4 and BE15, and of NPPF paragraphs 195 and 205. In summary all the foregoing seek to ensure that development integrates acceptably with historic character appearance, significance and integrity.
53. It is consequently unnecessary to consider whether any public benefits of the scheme either exist or would outweigh any harm (the appellant noting that the scheme stems from the motivation to move towards a more sustainable form of energy usage at Mudeford House). It is also unnecessary to consider whether alternative approaches could have achieved comparable benefits.

Conclusion

54. Having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Conditions

55. As the application is retrospective it is unnecessary to require commencement in line with section 91 of the 1990 Act. It is nonetheless necessary to impose condition 1 securing compliance with the approved plans in the interests of certainty and so as to ensure that the development remains as assessed above.²¹ Following on from my reasoning in paragraph 41 of this decision, I have also imposed condition 2 to avoid undue effects to the living conditions of those nearby in respect of noise.²² In imposing conditions I have had regard to the relevant provisions of the NPPF, PPG and of statute to ensure that all are appropriate.

Tom Bristow
INSPECTOR

²⁰ 8/18/3032/HOU, approved 30 April 2019.

²¹ Thereby obviating the need for BCP's proposed second condition.

²² Thereby obviating the need for BCP's proposed third conditions.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall accord with the following approved plans: '20-1074-LOC', dated June/21, the Location and Block Plan, and 23.011-HGP-01-22-DR-A-2001 REVISION C, dated July 2024, entitled 'Pool Plant Room Details'.
- 2) The development hereby permitted shall operate so as to function with no greater level of sound generation or effects than established via the Noise Impact Assessment of 25 September 2023 prepared by Vanguardia, ref. 0055609-VAN-RP-0002, Revision P01, or 42dB(A) at the nearest sensitive receptor in line with the Microgeneration Installation Standard (MCS 020, Issue 1.3), whichever is the lesser.