The Planning Inspectorate

Appeal Decision

Site visit made on 10 September 2024

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal Ref: APP/J1915/D/24/3341805
16 Pishiobury Drive, Sawbridgeworth, CM21 0AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr James Parker against the decision of East Hertford District Council.
- The application Reference is 3/23/0542/HH.
- The development proposed is the installation of an Air Source Heat Pump and additional solar PV panels.

Decision

1. The appeal is allowed and planning permission is granted for the installation of an Air Source Heat Pump and additional solar PV panels at 16 Pishiobury Drive, Sawbridgeworth, CM21 0AE, in accordance with the terms of the application, Ref. 3/23/0542/HH, subject to the conditions set out in the schedule at the end of this decision.

Main Issue

2. The main issue in this case is the effect of the noise from the proposed air source heat pump (ASHP) on the amenity of the living conditions of the neighbours at 18 Pishiobury Drive.

Reasons

3. The appeal property is a two storey detached dwelling located in a predominantly residential area of Sawbridgeworth. It is also located within the setting of the Grade II Registered Park and Garden (RP&G) of Pishiobury Park, the Grade II listed The Lodge, the Gate Piers next to No. 1 Pishiobury Drive (Grade II listed), and The Straw Hat Restaurant (near the junction with Chaseways), also Grade II listed. The council considers that the proposed development would result in a neutral impact to the setting of the Historic Garden and listed buildings, and a heritage statement is not considered necessary. I agree with that assessment.

4. There is considerable background to the appeal proposal that has been provided to me. I have noted it, but my decision will rest on the relevant policies and material considerations. Therefore I will not rehears these matters here. The appeal proposal seeks permission for the installation of an air source

heat pump (ASHP) and additional solar PV panels at the rear elevation. The solar PV panels are not the subject of a refusal reason.

5. The ASHP would be on the rear elevation of the house and a fixed (cedar wood) barrier next to the ASHP is proposed to attenuate the sound. The proposed ASHP model would be either Daikin (3H HT EPRA018DW). or Samsung (EHS Mono HT AE120BXYDEG), both in a dark colour.

6. The development plan policies that are most relevant to this appeal are Policy EQ2 and Policy DES4 of the East Herts District Plan adopted in October 2018. The pertinent text of policy EQ2 'Noise Pollution' is

"*I. Development should be designed and operated in a way that minimises the direct and cumulative impact of noise on the surrounding environment. Particular consideration should be given to the proximity of noise sensitive uses, and in particular, the potential impact of development on human health.*

II. Applications should be supported by a Noise Assessment in line with the Council's Noise Assessment Planning Guidance Document.

III. Noise sensitive development should be located away from existing noise generating sources or programmed developments where possible to prevent prejudicing the continued existing operations. The use of design, layout, landscaping tools and construction methods should be employed to reduce the impact of surrounding noise sources."

7. With regard to item II of Policy EQ2, the council's Noise Assessment Planning Guidance Document referred to appears not to have been published. The decision notice included the statement that "The proposed Air Source Heat Pump is predicted to exceed the East Herts District Council's noise criteria (25dB[1]) for residential area in this part of Sawbridgeworth". There appears to be no derivation or justification for the figure of 25dB, but I am told that there is a 'working policy' adopted by officers which requires that noise from ASHPs at the most affected assessment point should be 5dB or more below background noise level. The council has confirmed in writing the existence of the working policy. It has further advised that neither the policy itself, nor the rationale behind it, is published and that the policy has not been subject to public scrutiny or to scrutiny by elected members[2].

8. Taking account of paragraph 48 of the National Planning Policy Framework (NPPF), which deals with the weight to be given to emerging plans that have been published, since this 'working policy' and the considerations behind it are not published, it must carry less weight than a newly emerging local plan. Furthermore, this 'guidance document' will be subject to regular change and the council's position may shift as discussions and the guidance document develops (see appellant's Appendix 6 of the grounds of appeal). For these reasons I can only give it very limited weight.

9. The relevant parts of Policy DES4 'Design of Development' are I (c) and (d). These require:

[1] All dB figures are A weighted.
[2] See Appendix 6 of the appellant's Grounds of Appeal.

"(c) Avoid significant detrimental impacts on the amenity of occupiers of neighbouring properties and land, and ensure that their environments are not harmed by noise and disturbance or by inadequate daylight, privacy or overshadowing;

(d) Incorporate high quality innovative design, new technologies and construction techniques, including zero or low carbon energy and water efficient, design and sustainable construction methods. Proposals for residential and commercial development should seek to make appropriate provision for high speed broadband connectivity, ensuring that Fibre to the Premises (FTTP) is provided;"

This policy does not provide any guidance as to how its aims are to be achieved or constraints on the new technologies, etc.

10. However, the council's Environmental Health team have measured the background noise level at night in Pishiobury Drive (30dB) and subsequently agreed that a full noise assessment would not be required for the application, but rather an absolute value of 25dB should be met. In other words, the noise level of the proposed ASHP at the nearest sensitive location should not be more than 25dB. The council's position is that noise from the proposed ASHP as proposed on application drawing ref. JP2402, even after the installation of the fixed barrier, is expected to exceed the background noise level (30dB) by approximately 3dB at the nearest noise sensitive receptor, and exceeding EHDC criteria by 8dB. As such, it is said that the proposed ASHP by reason of the noise level would result in a detriment to neighbour amenity of No.18.

11. This does not sit well with an earlier response from Environmental Health, quoted in the appellant's appeal statement, referring to the same ASHP models. In an email dated 31 January 2023 from Environmental Health to the planning officer it was stated: "The short version is that their unit would not meet our planning condition, however due to the absolute level of the unit, the noise may not be considered likely to cause a nuisance/disturbance. My standpoint is that they should be allowed to go with either of the units as it meets the MCS020 standard, and in worst case conditions should not impact our goals of protecting amenity and preventing a nuisance. I know that this is an issue due to the decision notice already being given." This statement of opinion by Environmental Health was given after the noise level in the vicinity had been measured.

12. The appellant notes that the policy of requiring 5dB below background, a relative measure, is in contrast to the recognised national standards which express requirements as an absolute figure. Before looking at national and other similar matters, such as permitted development rights, I should note that the appellant's appeal statement is lengthy and contains a considerable amount of technical material. Since that material is known to both parties, it would not be appropriate to set it out in detail. I will therefore deal with it relatively briefly.

13. The following is an outline of the appellant's case in respect of national; standards:

- British Standard BS8233 sets desirable noise levels for the interior of domestic buildings. The 'sleeping level' between 23:00 to 07:00 is the most severe

constraint at 30 dB LAeq,8hr. Applying the 15dB correction, as set out in BS 8233, for the attenuating effect of the fabric of the subject building (with windows in vent position[3]), this results in a predicted interior level of 18dB, taking account of the MCS calculation 33dB at 1m in front of the window (see bullet point 3). This is 12dB below, and thus well within, the 'desirable' level for night time sleeping of 30dB (33dB at 1m form the subject window, minus 15 for fabric attenuation within the room equals 18, 12 below 30dB).

- Permitted development of ASHPs in the General Permitted Development Order 2015 (as amended), Schedule 2, Part 14, Class G, (d), development is not permitted (as relevant to the appeal proposal) if: i) it does not comply with MCS Planning (or equivalent) standards – see 3rd bullet point below; ii) the volume of the ASHP's outdoor compressor would exceed 0.6 cubic metres. No other item in G.2 or in the conditions in G.3 would exempt the appeal ASHPs from being installed; the proposed ASHPs would not be excluded due to noise constraints, only due to its volume exceeding 0.6m^3.

- The proposed ASHPs comply with the Microgeneration Certification Scheme Planning Standards (MCS-020). The MCS-020 allows an air source heat pump to be approximately 37dB at 1m from the centre of the nearest habitable room window in any given location. It should be noted that i) there is no stipulation with respect to areas with low background noise levels; and ii) the table on drawing No.JP2402 shows the sound level of the ASHP at its rated maximum of 60dB, with a distance from assessment position of 6m giving a reduction for distance of -17dB, and a solid barrier reduction, shows a sound level at the assessment position of 33dB[4]. These Sound Pressure Calculations, in accordance with MCS020 and created using MCS calculation tool Box 6 give <=37dB(A) which equals a pass for permitted development.

Conclusions

14. Beginning with the local plan policies set out in paragraphs 6 and 9 above, policy EQ2 has 3 elements; I consider that these are met. The ASHP has been sited with regard to proximity of noise sensitive uses, a fixed sound 'barrier' has been incorporated, there is unlikely to be any cumulative impact and the proposal has been supported by a Noise Assessment in the form of the appellant's documentation. The third element of the policy is not relevant since it relates to the location of noise sensitive development.

15. The second element of the policy requires the Noise Assessment to be in line with the council's Noise Assessment Planning Guidance Document. There appears to be no such published document. The only thing that has been identified as serving the purpose of this Guidance Document is an 'officer working document'. This appears to be in the minds of officers since no written version is available, but it is said to be something that is evolving and may change. It cannot be considered as serving the purpose of the Guidance Document having the primacy of a development plan policy, and to the extent

[3] It is during the coldest times of the year that ASHPs will be at their noisiest, that is at their specified sound power.
[4] This figure appear is arithmetically wrong on drawing No.JP2402 from the figures included. This is because on the 5th line, where it shows 'Barrier (no view) there should be a reduction of 10dB to account for the 'cedar barrier'. This 10dB reduction is shown at step 5 on page 21 of the Microgeneration Installation Standard: MCS 020, and if included in the table produces 33dB.

that it carries some weight, this is outweighed by the assessment of noise that is put forward in a tangible form.

16. Turning to the data that has been presented, the 2 alternative ASHPs put forward by the appellant have specified sound powers that do not exceed 60dB. Beginning with British Standard BS8233, the calculations shown at the first bullet point of paragraph 13 predicts an interior level of 18dB within the nearest noise sensitive location. This is 12dB below, and thus well within, the 'desirable' level for night time sleeping.

17. The Microgeneration Certification Scheme Planning Standards (MCS-020) allows an air source heat pump to be approximately 37dB at 1m from the centre of the nearest habitable room window in any given location, without any stipulation with respect to areas with low background noise levels. The table provided shows a source sound level of 60dB, at 6m from the assessment position provides a reduction for distance of -17dB, and a reduction for the cedar barrier of -10dB which provides a sound level at the assessment position of 33dB; at less that 37dB, this amounts to a pass.

18. I have left the matter of permitted development to last as it is said by the appellant to be a fallback position that is less favourable than the appeal proposal.

19. The ASHPs considered for the appeal application were restricted to those with a Quietmark certification. Quieter ASHPs, such as those with the Quietmark certification, must accommodate extra sound insulation and/or a larger fan and thus may tend to be physically larger than louder models and, as in this case, thereby exceeding the maximum physical dimensions required for permitted development. There is, however, no technical requirement to limit the design choice to units with a Quietmark certification, and there are units on the market which meet both the criteria for permitted development and the technical requirements of the installation.

20. The appellant cites one such unit as the Mitsubishi Ecodan PUZ-WM-112-VAA. He also asserts that there are several other manufacturers who also make suitable units which, appropriately sited within the curtilage, would meet the requirements of the permitted development rules. For fallback to be a material consideration, there must be a 'real' prospect that the alternative development would take place, but it does not have to be probable or likely, a possibility will suffice.

21. I have no reason to doubt the intension of the appellant to reduce the contribution to climate change by decarbonising his heating, noting that the uncontentious part of the planning application is additional solar PV panels. I therefore consider that the fallback position is a real prospect, in the event of a dismissal of the appeal, that an ASHP that would comply with the permitted development requirements would be installed. Under permitted development rights this could result in a noise level up to 4dB higher.

22. I have taken account of all other matters raised, but in the light of the factors that I have set out above, the proposed ASHPs comply with Policies EQ2 and DES4, when judged against tangible figures that are published. Therefore the appeal will be allowed.

Conditions

23. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested 3 conditions in the event that the appeal is upheld. I have considered these in the light of Planning Practice Guidance. The proposed conditions are that materials match the existing, that the development be carried out in a in accordance with the approved plans, and that the Air Source Heat Pump and the associated solid cedar wood screen shall comply with the specification of the 2 ASHPs detailed within the Design Statement (version 202401) and drawing ref. JP2402 and shall be retained in this form thereafter.

24. The first of these is not appropriate since the ASHP will not match the existing materials of the house. But compliance with the plans is necessary for certainty and avoidance of doubt as to the development permitted, and I will impose it.

25. The third condition is objected to by the appellant on the basis that the condition would restrict the choice of heat pump to a subset of those set out in the planning application, and also seeks to impose the additional requirement that the development 'shall be retained in this form thereafter'. His point is that it is certain that, when the unit reaches the end of its natural life (perhaps in 15 years' time) the restricted range of models specified by the council will no longer be available. It is likely that this necessary replacement will be a 'distress purchase', ie. would follow a failure of the unit during the heating season, necessitating urgent action, incompatible with the requirement to seek planning consent. The effect of this condition is thus to frustrate the future replacement of the sole space heating system for the house, in the most likely failure scenario. Such a restriction is both unreasonable and unnecessary

26. The appellant has suggested an alternative condition: 'The Air Source Heat Pump and the associated solid cedar wood screen hereby approved shall comply with the specification model Daikin (3H HT EPRA018DW) or Samsung (EHS Mono HT AE120BXYDEG) or another heat pump meeting the specified conditions, as detailed in the Design Statement (version 202401) and drawing ref. JP2402 received 7th February 2024. The specified conditions referred to are:
    - That the pump is QuietMark and MCS certified (or equivalent at the time of any subsequent replacement);
    - That its dimensions are no greater than 1018 (H) x1270 (W) x533 (H) mm
    - That its specified sound power does not exceed 60dB(A)

27. I am satisfied that the first part of the appellants' suggested condition would achieve the council's aim, whilst allowing the appellant to choose from the current available ASHP at the time of carrying out the development, bearing in mind the time that has elapsed since the planning application was made and that there are continuing model changes. I will adopt this part of the suggested condition which is necessary to ensure the protection of the neighbour's amenity.

28. The second part of the suggested condition appears to be responding to any replacement pump at the 'end of life' point of the installed pump. I do not find this part of the appellant's suggestion satisfactory because it is reasonable to anticipate that, at this date (which might be in 15 years' time or so), that ASHP design will have moved on and the desired performance is likely to be more

stringent that can currently be specified. At the same time, I can understand that a replacement at the time when the pump breaks down will likely be a matter of urgency.

29. I therefore intend to impose a condition that will require any future replacement pump to meet one of the following: be approved in writing by the Local Planning Authority; or meet the requirements of any permitted development right current at the time; or that the pump is QuietMark and MCS certified (or equivalent at the time of the replacement); and that in any event it shall have dimensions not greater than 1018 (H) x1270 (W) x533 (H) mm and its specified sound power does not exceed 60dB(A). This condition is also necessary to ensure the protection of the neighbour's amenity.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans.

3) The Air Source Heat Pump hereby approved shall comply with the specification of the model Daikin (3H HT EPRA018DW) or Samsung (EHS Mono HT AE120BXYDEG) or another heat pump meeting the specified conditions, as detailed in the Design Statement (version 202401) and drawings ref. JP2402 received 7th February 2024.

4) The Air Source Heat Pump hereby approved shall not be replaced at any time other than with a pump which meets one of the following: be approved in writing by the Local Planning Authority; or meets the requirements of the provisions of permitted development [the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification)], current at the time; or that the pump is QuietMark and MCS certified (or equivalent at the time of the replacement); and that in any event it shall have dimensions not greater than 1018 (H) x1270 (W) x533 (H) mm and its specified sound power does not exceed 60dB(A).

End of Schedule