

Appeal Decision

Site visit made on 31 July 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2024

Appeal Ref: APP/C1055/W/24/3339902

41 Merton Drive, Derby DE22 4JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Ainhoa Aguado San Millan against the decision of Derby City Council.
- The application Ref 23/01511/FUL was approved on 9 January 2024 and planning permission was granted subject to conditions.
- The development permitted is the installation of an air source heat pump.
- The condition in dispute is No 3 which states that: The heat pump hereby approved shall not be brought into use, unless and until an assessment to show that the rating level of the proposed heat pump equipment will be at least 5 dB below the background level has been submitted to and been approved in writing by the Local Planning Authority. The assessment must be carried out by a suitably qualified acoustic consultant/engineer and be in accordance with BS4142: 2014 Methods for rating and assessing industrial and commercial sound.
- The reason given for the condition is: In order to safeguard the amenities of adjoining residential occupiers. The details are needed prior to the start of work so that any mitigating measures can be incorporated into the build and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

Decision

1. The appeal is allowed and planning permission Ref 23/01511/FUL for the installation of an air source heat pump at 41 Merton Drive, Derby DE22 4JL granted on 9 January 2024 by Derby City Council, is varied by deleting condition 3 and substituting it with the following condition:

The air source heat pump hereby permitted shall be installed and operated such that the level of noise emitted from the air source heat pump does not exceed 42 dB LAeq at any time, as measured on the boundary of the appeal site shared with No 1 Havering Close. To meet this minimum standard, details of mitigation measures shall be first submitted to and agreed in writing with the local planning authority before the mitigation measures are installed and prior to the first operation of the air source heat pump hereby

permitted. Thereafter the noise mitigation measures shall be retained for the lifetime of the development.

Preliminary Matters

2. The description of development in the banner differs from that given on the original planning application form. The original description also included the air source heat pump's model name, location, dimensions, and noise calculation. The banner description provides an appropriate and succinct description of the proposed appeal development and so, no party would be prejudiced by referring to such.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO) under Schedule 2, Part 14 Class G sets out that the installation, alteration, or replacement of a microgeneration air source heat pump on a dwelling is permitted development. Class G.1 of the GPDO sets out that such development is not permitted by Class G, unless the air source heat pump complies with the MCS Planning Standards or equivalent standards. Class G.2 sets out that development is not permitted by Class G if criteria (a)-(k) are not met, subject to conditions, as set out at G.3 of Class G.
4. The appellant asserts that the proposed heat pump would be MCS compliant. Although, they also state on the application form that the noise calculation for the proposed heat pump would be at 44 decibels (dB), which is 2 dB higher than the maximum threshold of 42 dB, to be MCS compliant. Thereby, the requirements of Class G.1 of the GPDO would not be met and hence, planning permission was sought for the proposed air source heat pump.

Background and Main Issue

5. The appellant seeks planning permission to carry out the proposed development without first undertaking and submitting for approval, an assessment to show that the rating level of the air source heat pump equipment would be 5 dB below the background noise level.
6. Having regard to the above and the reasons for the disputed condition, the main issues in this appeal are whether condition 3 meets the 'six tests' in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG), and the effect of the proposed development on the living conditions of neighbouring occupiers, in particular regard to noise disturbance.

Reasons

The Six Tests

7. Paragraph 56 of the Framework and the PPG state that conditions should only be imposed where they are, necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise and reasonable in all other respects. The PPG furthermore sets out that each of the six tests needs to be satisfied for each condition.

8. The disputed condition requires an assessment to be carried out and then submitted and agreed in writing with the local planning authority, to demonstrate that the proposed air source heat pump would be at least 5 dB below the background level. However, the condition does not subsequently require the air source heat pump to be installed and operated in accordance with the noise levels found to be acceptable following the assessment. Therefore, to undertake such assessment would be unreasonable and place an unnecessary disproportionate burden on the appellant in such circumstances.
9. The design of the proposed air source heat pump has a stated maximum noise level of 44 dB. A condition to change the dB noise level of the air source heat pump, would consequently result in a different proposal. Furthermore, if the assessment, required pursuant to condition 3, found that a maximum noise level of no more than 42 dB would be required, then the air source heat pump would be 'permitted development' under Schedule 2, Part 14 Class G of the GPDO. Accordingly, the condition would be unnecessary and unreasonable for such reasons.
10. Condition 2 of the planning permission requires the development to conform in all aspects with the plans and details shown in the application, in order for it to be lawfully implemented. If an implementation clause were included in condition 3 to require an alternative noise level to that applied for, then consequently, the appellant would not be able to comply with the requirements of both condition 2 and condition 3 at the same time. This would impact on the lawful deliverability of the air source heat pump.
11. In view of the above, condition 3 fails to meet the six tests set out in the Framework and the PPG.

Living Conditions

12. The Council assert that background noise levels might be less than the assumed background sound level of 40dB(A), especially at night-time, due to the location of the development. Although, no substantive evidence has been provided to demonstrate whether or not the proposed maximum 44 dB level of the proposed air source heat pump would have a harmful effect on the living conditions of the neighbouring occupiers.
13. Notwithstanding such, under Schedule 2, Part 14 Class G of the GPDO it would be permitted development for an air source heat pump that is 2 dB less than that proposed. Thereby, in view of this realistic fallback position, it would be appropriate and reasonable to assume a noise level of 42 dB would be acceptable in respect of the living conditions of neighbouring occupiers, even if a comprehensive noise assessment were to be carried out and this found that noise levels were below 40dB(A).
14. In view of the fact that the Council have granted planning permission, subject to conditions, rather than refused permission, implies that it is accepted by the Council that appropriate mitigation measures could be implemented to ensure the protection of the living conditions of neighbouring occupiers, irrespective of the background noise levels that may be found following an assessment.

15. While a detailed assessment is not necessary to establish the existing background noise levels and the neighbouring occupiers of 1 Havering Close (No 1) raise no objections to the proposed development. In view of the MCS Planning standards, and that the proposed air source heat pump would be located close to No 1, it would be reasonable and appropriate that a noise mitigation scheme is provided, to ensure the proposal would not cause undue noise disturbance to the living conditions of the current occupiers and any future occupiers of this neighbouring property.
16. Having regard to the above, subject to an alternative condition requiring appropriate noise mitigation measures to be agreed and installed, the proposed development would not have a harmful effect on the living conditions of neighbouring occupiers by reason of noise disturbance. Consequently, the proposal would not conflict with saved Policies GD5 and E12 of the City of Derby Local Plan Review (January 2006), which amongst other matters, require development to not cause unacceptable harm to the amenity of nearby areas, including in relation to noise and, that would not be unacceptably detrimental to the health and amenity of users of adjoining land, respectively.
17. The Council has also referred to policies within the Derby City Local Plan Part 1- Core Strategy (January 2017) in reaching their decision. However, I find that Policies CP3 and CP4 of the Core Strategy are not of relevance to the proposal, as they relate to matters regarding placemaking, character, and context, rather than living conditions and neighbouring amenity matters.

Conditions

18. In addition to substituting the disputed condition, it is necessary and appropriate to retain conditions 1 and 2 of the permission for the same reasons given by the Council and so, they should remain unchanged.

Conclusion

19. For the reasons given above, I conclude that the appeal should succeed and vary the planning permission by deleting the disputed condition No 3 and substituting it with an alternative condition.

C Billings

INSPECTOR