



Appeal Decision

Site visit made on 15 October 2024

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2024

Appeal Ref: APP/T2215/D/24/3340938

2 Robinson Way, Northfleet, DA11 9AB

- 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 Tanvir Hassan against the decision of Dartford Borough Council.
 - The application Ref is DA/23/01456/FUL.
 - The development proposed is the installation of a heat pump in the garden area.
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Decision

1. The appeal is dismissed.

Reasons

2. The issue in this case is the effect of noise from the proposed air source heat pump (ASHP) on the neighbouring dwelling at No.4 Robinson Way.
3. The appeal dwelling is a three-storey end of terrace property to the north of Robinson Way. Robinson Way is a wholly residential area with the surrounding properties having a similar character and design to the appeal site. The site has an attached property to the south, at No.4 Robinson Way, whilst to the north is a block of 3 garages. The flank wall of these, close to the position proposed for the ASHP, is constructed in brickwork.
4. The Environmental Protection Officer's (EPO) response to the planning officer when consulted on this proposal, indicated that the model proposed in the application was an EDLA 06E(3)V3. However, this was not specified on the application form and the technical specifications that the appellant provided covered 3 models. Through the Case Officer, I asked if this model had been agreed with the appellant, and I also asked for a copy of the MCS assessment¹. I was provided with the MCS assessment and told that the EPO had taken a worst case scenario (the noisiest of the 3 at 62dB(A)), and that this would be re-assessed should a different make or model be selected.
5. I was also advised, in response to my query, that the nearest Noise Sensitive Receptor (NSR) would be the neighbour at No.4 Robinson Way, and that the EPO also noted that there is an enclosed brick wall area (the garage referred to above) where the proposed ASHP would be installed, which would cause noise to be reflected South/South West. This would magnify that noise at the neighbour's boundary, and was not clearly indicated on the plans.

¹ The Microgeneration Certification Scheme Standard MCS 007.

6. The response of the EPO to the planning consultation was that the acoustic impact the ASHP model tested would generate a sound power level that is not permitted development. Therefore the EPO requested that, to make the proposal acceptable, a suitable 'acoustic enclosure' be incorporated into the design to reduce the noise level at the NSR. This would need to be a minimum reduction of 5 to 10dB(A).
7. In the event, the council refused planning permission, rather than grant permission with a suitable condition. In response to my enquiry mentioned in paragraph 4 above, the planning officer confirmed that a condition requiring a baffle ('acoustic enclosure') would be acceptable.
8. However, before going further, there is an error in the submitted MCS relating to 'Step 2' which accounts for 'directivity', that is the reflection from reflective surfaces. In the MCS the ground surface and the house wall on which the ASHP would be installed were taken into account. However, the proposed ASHP would be sited close to the wall of the garage already mentioned, which means that there would be 3 reflective surfaces, and therefore the measure should be 8 rather than 4 used in step 2 of the MCS.
9. I also doubt the figure used in step 3 (distance from pump to the assessment position – the NSR) which was taken as 5.5m. The NSR is at the neighbour at No.4 Robinson Way. From what I saw, it has a door to a living room on the ground floor and a bedroom window at first floor, both at about 7.5 to 8m away. However, the ground floor door would be shielded by the fence on the boundary between the houses, which would allow for an assumption of -10dB (MCS note 5 to step 5, second bullet point). However, this fence would not shield sound to the first floor bedroom window.
10. Another consideration that does not seem to have been taken into account is that the proposed ASHP would be fixed to the rear elevation of a single storey side extension to the appeal property. This wall sits behind the main rear façade of the house itself, and therefore there would be a degree of 'baffle' arising from this relationship.
11. Taking all these matters into account, I am of the view that with the selection of an ASHP within the range specified in the application, other than the 'worst case' loudest one, together with any necessary baffle, an accurately completed MCS would demonstrate a 'Pass' at step 10 of the MCS. Therefore the appeal could be upheld with a suitable condition requiring the identification of the precise model of ASHP to be used and a completed MCS demonstrating a 'Pass', with baffle if needed. This would need to be pre-commencement condition, since clearly the condition would need to be satisfied before the pump could be ordered, let alone put in place.
12. In accordance with Section 100ZA(5) of the Town and Country Planning Act 1990, if the Inspector is minded to grant planning permission subject to pre-commencement condition(s) he/she may only do so with the written agreement of the appellant to the terms of the condition(s). I therefore asked the Case Officer to explain the position to the appellant, providing a draft text of the condition, requesting a statement of whether or not such a condition would be acceptable.

13. The response was that there was too much hassle involved, and no agreement was given to the suggested pre-commencement condition. Based on the information before me, which does not include the precise model ASHP proposed or an accurate MCS assessment, I cannot be satisfied that the proposed ASHP would not lead to significant harm to the residential amenities of the occupiers of the neighbouring dwelling at No.4 Robinson Way.
14. Therefore, the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR