



Appeal Decisions

Inquiry held on 11-13 and 18 November 2024

Site visit made on 11 November 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Appeal A Ref: APP/X5990/C/23/3326185

Appeal B Ref: APP/X5990/C/23/3326186

Armitage Hall Apartment, 224 Great Portland Street, London W1W 5QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Bachar Aintaoui, and Appeal B is made by Mrs Linda Aintaoui against an enforcement notice issued by Westminster City Council.
- The notice was issued on 15 June 2023.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years the installation of a water/sprinkler tank, three air conditioning units and associated screening on the third floor flat roof within the south lightwell area of the building and the installation, at third floor level of a pipework and ducting and associated box housing on the wall.
- The requirements of the notice are to:
 1. Remove the water/sprinkler tank installed on the third floor flat roof area in the south lightwell of the Property, as shown outlined in red on Photograph A, and any associated pipework, fixtures and fittings.
 2. Remove the 3 air conditioning units installed on the third floor flat roof in the south lightwell of the Property, as shown outlined in blue in Photograph B, and any associated pipework, fixtures and fittings.
 3. Remove the screening erected around the water/sprinkler tank and air conditioning units installed on the third floor flat roof in the south lightwell of the Property, as shown in Photograph C.
 4. Remove the boxing and pipework attached to the wall at third floor level, as shown in Photograph D.
 5. Remove all waste, materials, equipment, and debris from the Property resulting from compliance with requirements 1, 2, 3 and 4 of this Notice.
- The period for compliance with the requirements is: Within six months of the notice taking effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), and (f) of the Town and Country Planning Act 1990 (as amended). Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is corrected. Planning permission is granted for some of the matters alleged, as explained in my conclusion and set out in my formal decision.

Appeal C Ref: APP/X5990/W/23/3325502

Armitage Hall Apartment, 224 Great Portland Street, London W1W 5QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr & Mrs Aintaoui against the decision of Westminster City Council.
- The application Ref is 23/01119/FULL.
- The development proposed is described as existing fire protection sprinkler tank, wall mounted box enclosing pipework and plant room enclosure panels.

Summary Decision: The appeal is dismissed.

Application for costs

1. An application for costs has been made by Mr & Mrs Aintaoui against the City of Westminster Council. This application is the subject of a separate Decision.

The enforcement notice

2. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice ("the Notice") in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act") include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellants or the local planning authority.
3. Just before the Inquiry opened, it was brought to my attention that there is ducting on the rear wall of Armitage Hall Apartment that serves equipment connected with other flats within the building. There is potential that this could be confused with the 'pipework and ducting and associated box housing' that is part of the matters alleged.
4. At the Inquiry, it was agreed that the Notice could be corrected to ensure that it made explicit reference only to the pipes and ducting within the box housing. This can be achieved by substituting the 'words pipework and ducting and associated box housing' for the words 'box housing and associated pipework and ducting' as well as substituting the photograph D attached to the Notice for one that edges the box housing and clarifies annotation to match the words of the amended allegation. There should also be a consequential correction to the 4th requirement of the Notice in the interests of consistency of wording. Both parties confirmed that they would not suffer injustice from this minor change to the wording and I have no reason to disagree.
5. At my site visit and during the course of the Inquiry, it became apparent that the box housing contained more than pipework and ducting. It also contains a mechanical ventilation and heat recovery ("MVHR") unit. The Notice does not explicitly refer to that unit and so it may not be required to be removed. That could result in a somewhat perverse consequence that compliance with the Notice could result in an unconnected item of plant being left on the wall. Moreover, by virtue of the provision of Section 173(11) of the 1990 Act it may gain planning permission, but be unusable without the associated ducting.
6. While the Council may not have been aware that the MVHR unit was within the box housing, their clear intention was that everything within the box was removed. I could exercise my power to correct the Notice to include it in both the allegation and requirements, in the interest of clarity. If I were to do so, it would make the Notice more onerous. However, the appellants had opportunity, and did provide evidence throughout the Inquiry in respect of the MVHR unit in connection with all grounds. Therefore, while it was raised, by me, late in the Inquiry proceedings, no injustice would arise from such a correction.

Appeals A and B on ground (e)

7. Ground (e) is that copies of the Notice were not served as required by Section 172 of the 1990 Act. The appellants have suffered some confusion around whether more than one enforcement notice was served. I understand that this has arisen because there were three separate investigations at the appeal site, such that the Council had three enforcement files. Each was combined into one notice, but there are 3 reference numbers on the covering letter and three copies of the Notice.
8. The Council has since confirmed that there is only one enforcement notice, albeit that there were three copies of it. For clarity, the appellants have invited me to quash two of the Notices, but I am satisfied that there is only one. I am unable to quash copies. In any event, a potential lack of clarity over the reference numbers and numbers of copies does not amount to a failure to serve the Notice as required by Section 172.
9. At the Inquiry, the parties agreed that the correction to exclude equipment relating to neighbouring flats meant that the Notice had been served correctly. In light of that, it has not been suggested that anybody having an interest in the land, being an interest that is materially affected by the Notice, has not been served with a copy. Therefore, the requirements of Section 172 have been met and the ground (e) appeal must fail.

Appeals A and B on ground (b)

10. Ground (b) is that the matters alleged in the Notice have not occurred. Amongst other things, the Notice alleges the installation of three air conditioning units. Through the appeal proceedings, the parties have agreed that there are, in fact, only two air conditioning units at the appeal site. It was further accepted by both parties that the Notice could be corrected to refer only to two air conditioning units without causing injustice. As I have no reason to disagree, I shall use my power to correct the Notice to that effect and the appeal on ground (b) succeeds to that limited extent. In all other regards, the matters alleged in the Notice, as corrected, are present at the site and have occurred.

Appeals A and B on ground (c)

11. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. The appellants' case in this regard is that two historic planning permissions, ref 03/05475/FULL ("the 2003 Permission") and 05/08397/FULL ("the 2006 Permission") permit many of the works.
12. For the avoidance of doubt, Mr Drew confirmed to the Inquiry that he believed that the screening, and pipework and ducting, were permitted by the 2003 Permission. He also suggested that the screening was, in part, permitted by a further planning permission, ref 14/08642/FULL ("the 2014 Permission") insofar as it relates to a gate between an external seating area ("the Seating Area") and the area containing the plant detailed in the allegation ("the Plant Area").
13. Mr Drew also confirmed that the box housing and water tank do not have planning permission. He clarified his view that the two air conditioning units – a smaller wall hung unit ("the Small AC Unit") and a larger ground mounted, twin fan unit ("the Large AC Unit") were not a breach of planning control because

they were not materially different to units permitted in 2003. Thus, the appellants no longer seek to place any reliance on the 2006 Permission.

14. It is clear that the 2003 Permission permitted a 'plant area' to be formed above the stairwell access to Armitage Hall Apartment. Plans from the 2003 Permission ("the 2003 Plans") show that plant area to be enclosed by screening that it is understood was never built. Instead, a large air conditioning unit was housed in a so-called 'Frog Box', designed to attenuate noise. A smaller unit was mounted on the rear wall, above the height of the screening shown on the plans. There remains dispute as to whether the use of the Frog Box and its presence at the site was lawful.
15. At the Inquiry, Mr Drew was somewhat unsure as to whether the individual items of plant were development in themselves. He was certain that the water tank was, but described as a 'moving feast' whether or not the replacement of one air conditioning unit with another might be development. However, whether or not the Frog Box was at the site lawfully, what is there now looks totally different to what was there before. There has not been a straightforward replacement of plant.
16. The appellants have described the Plant Area as 'plant within a plant room'. Thus, it is suggested that the actual plant installed could be changed and added to without planning permission, provided it accords with the conditions of the 2003 Permission. However, while a building is defined in Section 336 of the 1990 Act as including any structure or erection, the installation of the plant behind the screening can be seen from other properties and, given the absence of any roof, is exposed to the exterior. The new plant that is positioned behind the screening, therefore, cannot be said to affect only the interior of the building. It affects the external appearance of the building. Thus, the plant is not excluded from the definition of development as provided by Section 55 (2)(a) of the 1990 Act by being within a plant room.
17. In any case, this scenario is not what happened. Undisputed photographic evidence provided by Dr Lee clearly shows that the Small AC Unit, Large AC Unit, water tank and most of the box housing were placed on the site before the screening. They cannot have been installed within a 'plant room' because the plant room, if there was one, was not there at the time.
18. An acoustic report is listed on the 2003 Permission as an approved plan. It specifies the plant to be installed. As, for the above reasons, new plant would be development, it seems more likely than not that the 2003 Permission does not permit the installation of any other plant, not specified in the report.
19. Moreover, while conditions do not expressly limit the development to any specific plant, or prohibit additional plant, condition 8 of the 2003 Permission requires noise generated by any plant not to exceed background levels at any time outside any residential property. The appellants' submitted noise report indicates that it does. Therefore, the air conditioning units that are currently at the appeal site are not permitted by the 2003 Permission, even if one item of plant could, theoretically, be substituted for a similar one, or plant could be lawfully installed in accordance with the 2003 Permission for the first time now.
20. Even if the screening itself could still be erected pursuant to the 2003 Permission, Mr Drew confirmed that the 2003 Permission was for a white powder coated, louvred screen. The current screen, while probably of similar

dimensions to that shown on the 2003 Plans, is grey and slatted. It also does not extend entirely around the plant area as shown on the 2003 Plans because the gate from the Seating Area which forms one side of the enclosure, is separate to it.

21. Notwithstanding the above, the gate into the Plant Area is contiguous with the fence around the Seating Area and a fence resembling the gate is shown on plans accompanying the 2014 Permission in that location. It is, therefore, more likely than not that this part of the screening is lawful, by virtue of the 2014 Permission and so is not a breach of planning control.
22. Accordingly, the appeal on ground (c) succeeds to the limited extent that that component should be excluded from the Notice. The precise extent of the fencing is only detailed in the photographs appended to the Notice, so the consequence of this conclusion is that the Notice is corrected through the substitution of Photograph C attached to the Notice with the one attached to this Decision.
23. However, for the above reasons, I find that, on the balance of probabilities, there is no planning permission for any of the plant described in the Notice or the remainder of the screening. Therefore, in all other respects, the appeal on ground (c) must fail.

Appeals A and B on ground (d)

24. Ground (d) is that, at the date when the Notice was served, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged. Section 171B of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
25. At the Inquiry, it was confirmed that the Small AC Unit provides cooling for an electrical cupboard, the Large AC unit provides space cooling for the apartment's living accommodation, the MVHR unit and ducting within the box housing controls air extraction and ventilation, and the water tank is related to a fire suppression system. Thus, each item of plant is independent to the others. For this reason, and because I have found this Notice does not concern the development of a plant room within which plant has been installed, the installation of each item should be considered a separate breach of planning control.
26. Photographic evidence of Dr Lee shows that the whole roof area subject to the Notice was free from plant on 9 June 2018. While not all of the area is within the photograph, it appears that a roof covering was being re-laid as part of the widespread renovation works being undertaken at that time. As most plant pre-dating that was housed within structures, including the Frog Box, it is, therefore, more likely than not that the Plant Area was free from equipment at that time.
27. Dr Lee provided further photographic evidence that the Large AC Unit was positioned in its current location in June 2021. In her written evidence, Mrs Aintaoui describes how she acquired the appeal site in March 2021 following

- renovation works by the previous owner that stopped in 2019, before the then contractor went into voluntary liquidation. She provided records from building control inspections that strongly suggest that no work took place at the site between 21 September 2018, when the 'first fix' of the ventilation system was said to be in place, and January 2020. She also provided a photograph dated 26 April 2019 that appears to show the Large AC Unit in its current location.
28. In written correspondence with Mrs Aintaoui in June 2021, Dr Lee described the previous contractor having vacated the site some three years earlier having left the incomplete air conditioning assembly at the site. At the Inquiry, Dr Lee said that he believed that the Large AC Unit had been left and that, as far as he was aware, it was not running. However, given that Armitage Hall Apartment was vacant at the time and renovation was incomplete, there would be no reason for the unit to be running. It is unclear how Dr Lee would have been able to know whether the units were connected to completed systems or not.
 29. By contrast, Mrs Aintaoui described how, on purchase of the apartment, she appointed an engineer to inspect the air conditioning system and bring it into use. While a report from the engineer dated 12 October describes that he attended the site to get the air conditioning system working for the first time, he also describes that all pipework was connected and that there was a small amount of nitrogen in the system for pressure testing.
 30. At the Inquiry, Mrs Aintaoui explained how a process referred to as 're-gassing' was carried out whereby the system was drained (de-gassed), serviced and then re-gassed to bring it into operation. This is not inconsistent with her correspondence with Dr Lee at the time, clarified in cross examination, suggesting that that it would be inconvenient to consider moving the Large AC Unit as that would require extensive work including re-gassing. That is because the work involved in moving it would have required the engineer to drain and re-gas the system again.
 31. With regard to the above, I find that the engineer's description of having found the pipework complete and nitrogen in the system for pressure testing is a clear indication that the system connected to the Large AC Unit, and therefore the unit itself, was substantially complete before the appellants purchased the property. Moreover, given the strong evidence that no work was carried out at the property between September 2018 and January 2020, it is more likely than not that it was substantially completed between Dr Lee's photograph of 9 June 2018 and the Building Control inspection of 21 September 2018. This was more than 4 years before the service of the Notice and, therefore, no action can be taken against the Large AC Unit.
 32. While Mr Drew may have appeared to have suggested at one point that the Large AC Unit was still incomplete, he also clarified that outstanding works were associated with enclosing the unit and attenuating noise, if required. Therefore, I find that these are akin to optional extra additional development and do not affect my above findings on the unit as it stands now.
 33. The Small AC Unit, on the other hand, is shown in a photograph of 18 June 2021 sat on the floor. It was hung in its final position sometime between then and 6 August 2021. While it may have been connected, it cannot be said to have been substantially complete until the unit itself, being the main external expression of the system, was installed at its final place.

34. The water tank is also shown in the photographs to have been installed between June and August 2021 and the appellants do not dispute that it was not too late to take enforcement action against that. Photographs show that the screening was installed later still, between August and November 2021.
35. As already noted, the box housing containing ducts and the MVHR system, was confirmed at the Inquiry to be entirely independent of the air conditioning system. There is no specific reference to it in the air conditioning engineer's report and there is no substantive evidence confirming when it might have been installed. It cannot be seen in a 'Google Earth' photograph of April 2020 and, while the view provided is not sufficient to confirm its absence, it does not confirm its presence either.
36. The burden of proof on this ground of appeal is with the appellants. Therefore, even if the plant within the box housing could be distinguished from the box itself as separate acts of development, it has not been shown that, on the balance of probabilities, it occurred more than 4 years before the Notice was served.
37. In conclusion, the appeal on ground (d) succeeds insofar as it relates to the Large AC Unit. I shall correct the Notice accordingly to remove reference to it. In the interests of clarity, an amendment to the wording must be made to ensure that the breach of planning control alleged relates only to the Small AC Unit, which is on the wall rather than the flat roof, and an amended Photograph B must be substituted to remove reference to the Large AC Unit. I shall also, in the interests of clarity, remove reference to the screening being 'associated' with the other development, because it has been shown to be separate.
38. The appeal on ground (d) fails in all other respects.

Appeal A on ground (a)

39. Ground (a) is that planning permission should be granted for the matters alleged in the Notice. For the reasons set out earlier in my Decision, a number of corrections to the Notice are required and the ground (a) appeal must be considered in respect of the alleged breach of planning control, as corrected. For the avoidance of doubt, this is:
- The installation of a water/sprinkler tank, and screening on the third floor flat roof within the south lightwell area of the building and the installation, at third floor level of a wall-mounted air conditioning unit and a box housing and associated MVHR unit, pipework and ducting on the wall.*
40. The main issue on the ground (a) appeal is the effect on the living conditions of the occupiers of Flats 6, 8 and 12 Armitage Apartments, with regard to outlook and disturbance from noise.
41. The Plant Area is on a flat roof within a light well providing light and ventilation to a number of flats within the Armitage Apartments building. The light well alongside the area is narrow, such that the development is in very close proximity to the wall containing windows of the neighbouring flats. Of these, Flat 6 is at a lower level and looks up towards the development, Flat 8 is broadly level with it, and Flat 12 is above. All 3 have windows from two bedrooms facing towards the lightwell area with their main living rooms facing in the opposite direction, overlooking Bolsover Street. There are also some bathrooms facing the lightwell, and windows from shared access

hallways/landings, although effects on those rooms would not result in harmful living conditions within the flats.

42. The screening targeted by the Notice ("the Screening") and subject to this ground (a) appeal is alongside the Seating Area shown in plans accompanying the 2014 Permission. The Seating Area is surrounded by a fence ("the 2014 Fence") that extends almost as far as the Screening and is a similar height to it. All of the development is well below the windows of Flat 12 and does not harm outlook from it.
43. The Screening is located around the edge of the Plant Area. It is very close to the Large AC unit, but slightly further away from the water tank. There are two windows within the main bedroom of Flat 8. One faces directly towards the 2014 Fence, and the other towards the Screening, at a point where the Large AC Unit is seen directly behind it. The majority of the outlook is, therefore, towards a fence and equipment that are there lawfully and the Screening makes a very minor difference to that. The larger bedroom of Flat 6 has only one window. It looks directly towards the 2014 Fence. The Screening is to the side and has no significant effect on outlook from there.
44. From the smaller bedroom of Flat 8, the Screening is seen to the side, with the majority of the outlook being towards the opposing wall. While this is not an open or expansive view, and some outlook remains available above the Screening, it is close and has the effect of furthering the enclosure from the small light well, already felt by this room.
45. From the smaller bedroom of Flat 6, the Screening has a significant presence, looming up from the edge of the flat roof. From here, the gaps in the slats are less noticeable, so the Screening has a more solid, angular appearance. Thus, the Screening harms the outlook and living conditions of the occupiers of these flats.
46. The appellants rely on their ability to construct screening pursuant to the 2003 Permission as a fallback, to which they say the Screening is no more harmful. However, the screening permitted in 2003 wrapped around the entire Plant Area and it appears from the contemporary documents before me was intended to be a complete enclosure for the Plant Area. The gate access into the Plant Area that has been built at the site with the 2014 Permission is inconsistent with that Screening and as such, it can no longer be completed. On this basis, it has not been shown on the balance of probabilities that the Screening shown within the 2003 Permission can be erected.
47. In any case, I attach limited weight to such a fall-back position, if it were to be available, because there seems to be little reason for the appellants to enclose the Plant Area which they cannot otherwise see. If it were to be erected, for example in attempt to attenuate noise from plant, the louvred screening of the 2003 Permission might provide benefits over the Screening that is slatted and has no demonstrated acoustic properties. It, therefore, provides no reason to permit the Screening.
48. The water tank generates no noise unless there is a major fire, at which time a pump would activate. In such an event, temporary noise would likely be of little concern to anybody nearby. The water tank's location in the Plant Area means that it has a very small effect on the outlook from the main bedroom windows of Flats 6 and 8. While it is positioned on the corner of the Plant Area closest to

the second bedroom windows it is slightly further away than the Screening. Even viewed alongside the other plant, it does not extend across the whole area of the flat roof and, as such, would not have such an oppressive appearance if the Screening did not exist. For these reasons, while noticeable from within Flats 6 and 8, I find that by itself, it would not have the same harmful enclosing effect of the Screening and would not cause harm to living conditions.

49. The box housing containing the MVHR unit is only readily visible from Flat 8 and the communal stairwell/landing areas giving access to the flats. Due to the angles and distances, this would likely be the case even if the Screening were not there. It is seen behind the Large AC Unit that I have found to be lawfully present on the site and alongside the 2014 Fence. In this scenario, it causes no harm to the outlook of the neighbouring residents.
50. The MVHR Unit is mechanical plant and, therefore, has potential to generate noise. However, I was told at the Inquiry that it runs continuously at a steady rate. I was completely unaware that it was operating when standing next to the unit, with the box housing door open, during my site visit. Therefore, I find its noise emissions to be insignificant. It does not harm the living conditions of neighbouring residents.
51. Relative to neighbouring flat windows, the Small AC Unit is sited behind the water tank. It is flush with the wall, so even without the Screening, would not significantly intrude into the outlook from the various flats. It could, however, generate noise. The unit is a replacement for a unit that previously existed, unattenuated, on the same wall.
52. While, taken at face value, there is no reason why this unit, similarly sized and sited, should give rise to any greater noise than was historically experienced around the lightwell area, that installation was subject to noise control conditions. Moreover, the acoustic report provided by the appellants indicates that the Small AC Unit operates above background noise levels and requires attenuation to avoid potential harm to living conditions.
53. From my experience, I find it likely that more discrete attenuation options, more closely related to the size and location of the unit, may be available to attenuate noise emissions from it and mitigate potential harm to Flats 6, 8 and 12. Such can, therefore, reasonably be required by planning condition worded so that, if a suitable scheme cannot be found, the unit must be removed.
54. The appellants evidence in respect of daylight and sunlight did not assess all windows of Flats 6 and 8. Whether or not that misguided the Council's conclusion that no harm would arise in that regard, without the Screening, I find that the individual items of plant would not have a significant effect on daylight, given their position relative to the windows and that there would be gaps between the items. There is no particular evidence that the water tank poses any structural risk to the building or presents a flood risk.
55. I understand that neighbouring residents regarded the Plant Area as providing a potential means of emergency escape and access for maintenance. However, even if there is a legal entitlement to use the appeal site for such purposes, this and any other land ownership matters have little to do with the planning merits of the case. Likewise, while I understand the frustration over the protracted process, multiple applications and an underlying feeling that

permission should be secured in advance of development, I am still required to consider the appeal on its particular merits at this time.

56. The Council has considered the effects of the unauthorised development as one single item. However, I have previously found that they are separate acts of development. While it can sometimes lead to erroneous assessment to consider certain developments in isolation, and such may have been problematic if both air conditioning units were being considered, given the nature of the effects arising from the limited number of items before me on this ground (a) appeal, I am satisfied that the effects of each item can be properly considered in isolation in this case.
57. In conclusion, I have found that the Screening would cause harm to the outlook of neighbouring residents, in conflict with those aims of Policy 38 of the Westminster City Plan 2021 (CP) that seek to ensure that development provides a good standard of amenity for neighbouring occupiers.
58. However, with appropriate planning conditions, the plant subject of this ground (a) appeal would not give rise to harmful living conditions within the neighbouring flats. They would accord with those aims of Policy D13 and D14 of the London Plan 2021, and CP Policies 33 and 38 that seek to protect the living conditions of neighbouring residents, including through consideration of noise and disturbance.
59. Therefore, the appeal succeeds in part as planning permission should be granted for the plant, but not the Screening. A Planning condition is required to specify the plans that development is permitted in accordance with, in the interests of certainty, and to seek approval and installation of noise attenuation to protect the living conditions of neighbouring residents. In the plans condition, I shall not specify the 'as built' drawing ref 283_AGA_005 as I am not convinced that it is fully reflective of the current situation or the other plans provided.

Appeals A and B on ground (f)

60. The appellants confirmed at the Inquiry that they did not wish to pursue the ground (f) appeal.
61. In any event, and for completeness, as set out above, the Notice will be corrected so that it only alleges a breach of planning control in respect of those items found not to be lawful. No correction or variation of the Notice will occur following success on ground (a) as removing some requirements could inadvertently result in the grant of an unconditional planning permission for some of the matters under Section 173(11) of the 1990 Act.
62. Therefore, the requirements should remain and, instead, reliance can be placed upon the Notice ceasing to have effect insofar as it is inconsistent with the planning permission, under Section 180(1) of the 1990 Act.
63. In that context, there is no substantive evidence to suggest that the steps required to be taken go beyond that necessary to remedy the breach. Accordingly, the appeal on ground (f) fails.

Conclusion on Appeals A and B

64. My conclusions on grounds (b), (c) and (d) result in corrections to the Notice. Namely, the Screening has planning permission insofar as it is common with the 2014 Fence only, and it is too late to take enforcement action in respect of the Large AC Unit. These items are, therefore, removed from the alleged breach of planning control and the requirements.
65. Following partial success on ground (a), I will grant conditional planning permission for the water/sprinkler tank, box housing and plant within it, and the Small AC Unit. Otherwise, I will uphold the corrected Notice and refuse planning permission for the remaining screening.
66. The requirements of the Notice will cease to have effect insofar as they are inconsistent with the planning permission which I will grant, by virtue of section 180 of the 1990 Act. The combined effect of this Decision is that the screening shown in Photograph C annexed to this Decision must be removed, and a scheme for attenuation of noise from the Small AC Unit must be submitted.

Appeal C

67. The appeal relates to the Screening, water tank and box housing. It is presented as a single, cohesive development of all items listed and for the reasons given in respect of the ground (a) appeal, the Screening would harm the outlook from Flats 6 and 8. Appeal C must be dismissed on that basis.
68. A further reason for refusal alleges that there is insufficient information to demonstrate that the plant room enclosure panels would provide adequate acoustic attenuation for the plant behind it. However, as explained above, the plant proposed emits only minimal noise. Given the Council's overall position that the installation of further plant requires planning permission, and that the purpose of the Screening is to enclose the water tank and box housing only, there is no reason to find harm from this proposal in respect of disturbance from noise.

Formal Decisions

Appeals A and B:

69. It is directed that the enforcement notice is corrected by:

- In Section 3 'The breach of planning control alleged'

The deletion of the text in its entirety and its substitution with the text "Without the requisite planning permission and within the last 4 years, the installation of a water/sprinkler tank, and screening on the third floor flat roof within the south lightwell area of the building and the installation, at third floor level of a wall-mounted air conditioning unit and a box housing and associated MVHR unit, pipework and ducting on the wall ("the Unauthorised Works")."

- In Section 5 'What you are required to do'

In Paragraph 2, the deletion of the text "Remove the 3 air conditioning units installed on the third floor flat roof in the south lightwell of the Property" and its substitution with the text "Remove the wall mounted air conditioning unit installed at the Property";

In Paragraph 4, the deletion of the text "Remove the boxing and pipework attached to the wall at third floor level" and its substitution with the text "Remove the box housing, associated MVHR unit, pipework and ducting on the wall";

- The deletion of Photograph B attached to the Notice and its substitution with Photograph B annexed to this decision;
- The deletion of Photograph C attached to the Notice and its substitution with Photograph C annexed to this decision;
- The deletion of Photograph D attached to the Notice and its substitution with Photograph D annexed to this decision;

70. Subject to the corrections, Appeal B is dismissed.

71. Subject to the corrections, Appeal A is allowed insofar as it relates to the installation of a water/sprinkler tank on the third floor flat roof within the south lightwell area of the building and the installation at third floor level of a wall-mounted air conditioning unit and a box housing and associated MVHR unit, pipework and ducting on the wall and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for that part of the alleged development at Armitage Hall Apartment, 224 Great Portland Street, London W1W 5QP, subject to the following conditions:

1. Except where they make reference to the fencing, the development hereby permitted shall be carried out in accordance with drawing Nos. 283_ASU_001, 283_AGA_003, Plant Room Photos & Plan/Model, Plant Room enclosure Plan.
2. Unless within 3 months of the date of this decision a scheme for the attenuation of noise from the wall mounted air conditioning unit, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the wall mounted air conditioning unit shall cease and the wall mounted air conditioning unit shall be removed until such time as a scheme is approved and implemented.
 - a. If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the use of the wall mounted air conditioning unit shall cease and the wall mounted air conditioning unit shall be removed until such time as a scheme approved by the local planning authority is implemented.
 - b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained in accordance with the approved scheme and retained for so long as the wall mounted air conditioning unit is installed.
 - c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

72. Appeal A is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the screening on the flat roof within the southern light well of

the building at Armitage Hall Apartment, 224 Great Portland Street, London W1W 5QP on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal C

73. The appeal is dismissed.

M Bale

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Peter Village KC

He called

Jonathan Drew MRTPI – Drew Planning

Linda Aintaoui

Bachar Aintaoui¹

FOR THE LOCAL PLANNING AUTHORITY:

Michael Feeney

He called

Vivien Bartlett – Planning Officer

SM Lee

Rattan Sehra – Planning Officer²

INTERESTED PARTIES:

Maria Overtoom³

Jak Serr⁴

¹ Contributed only to the round table session

² Contributed only to the round table session

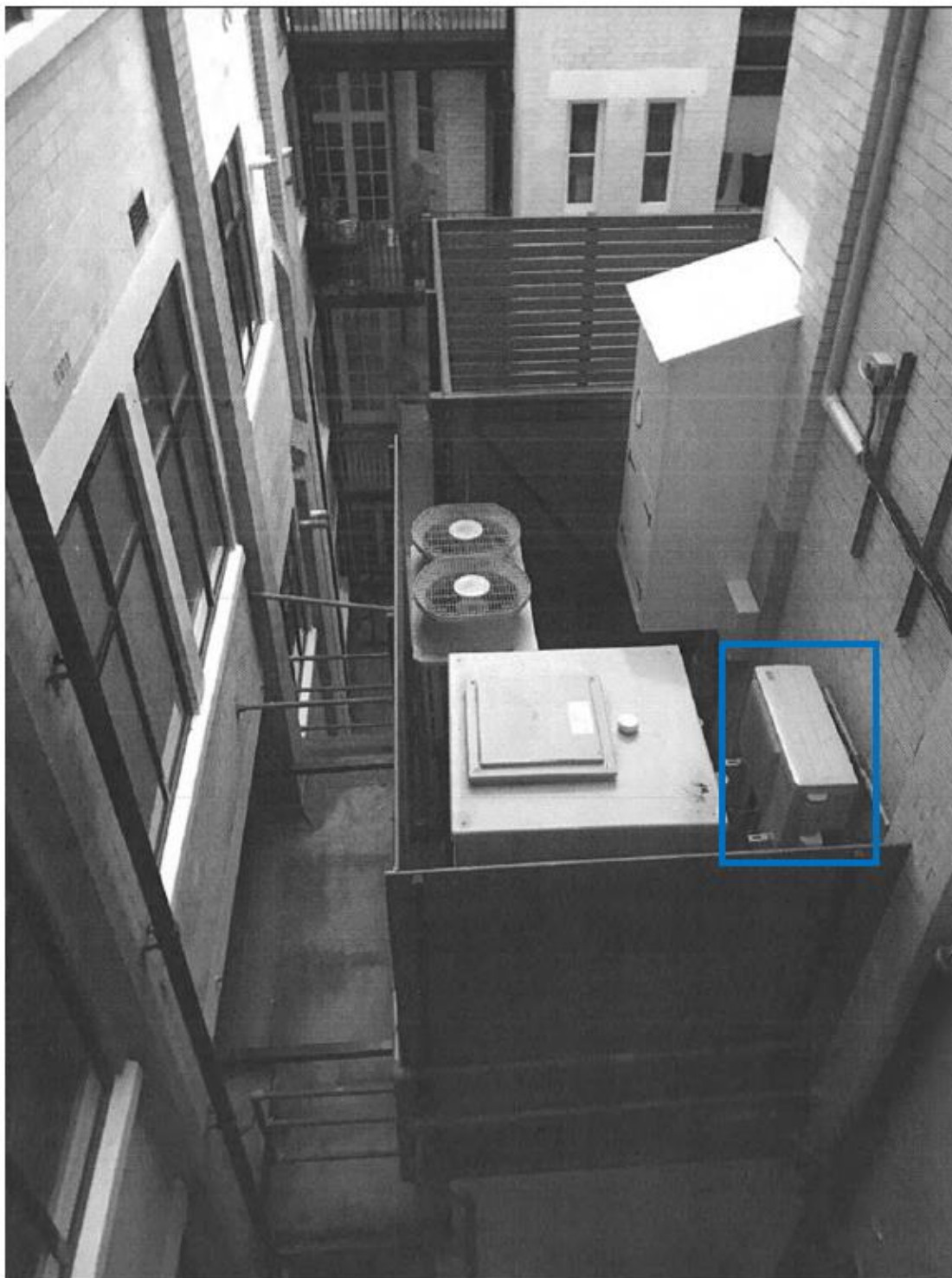
³ Whose written statement was read on their behalf, did not appear in person

⁴ Appeared to clarify procedural matters during the virtual opening session on 11 November and then a written statement was read on their behalf

DOCUMENTS SUBMITTED AT THE INQUIRY

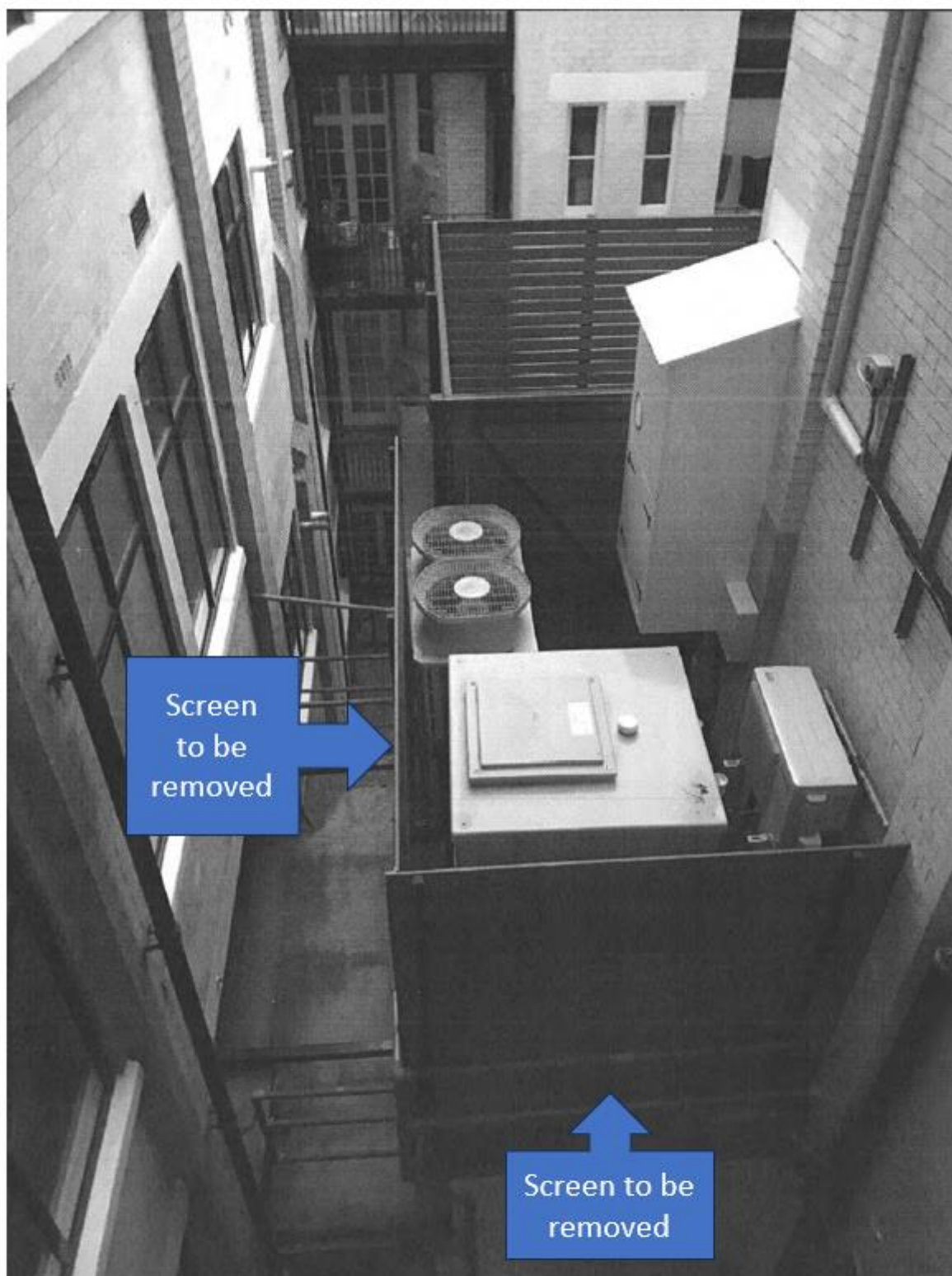
- ID1 Opening submissions on behalf of the appellants
- ID2 Opening submissions on behalf of Westminster City Council
- ID3 Written statement of Maria Overtoom, read to the Inquiry
- ID4 Written statement of Jak Serr, read to the Inquiry
- ID5 Email from J Drew to V Bartlett and R Sehra dated 11 April 2023
- ID6 Drawing AL 004 E
- ID7 Amended Photograph D to the Notice
- ID8 Closing submissions on behalf of Westminster City Council
- ID9 *R (oao Braithwaite) v East Suffolk Council* [2023] PTSR 832
- ID10 Closing submissions on behalf of the appellants
- ID11 Outline costs application of the appellants
- ID12 Costs submissions on behalf of Westminster City Council

PHOTOGRAPH B



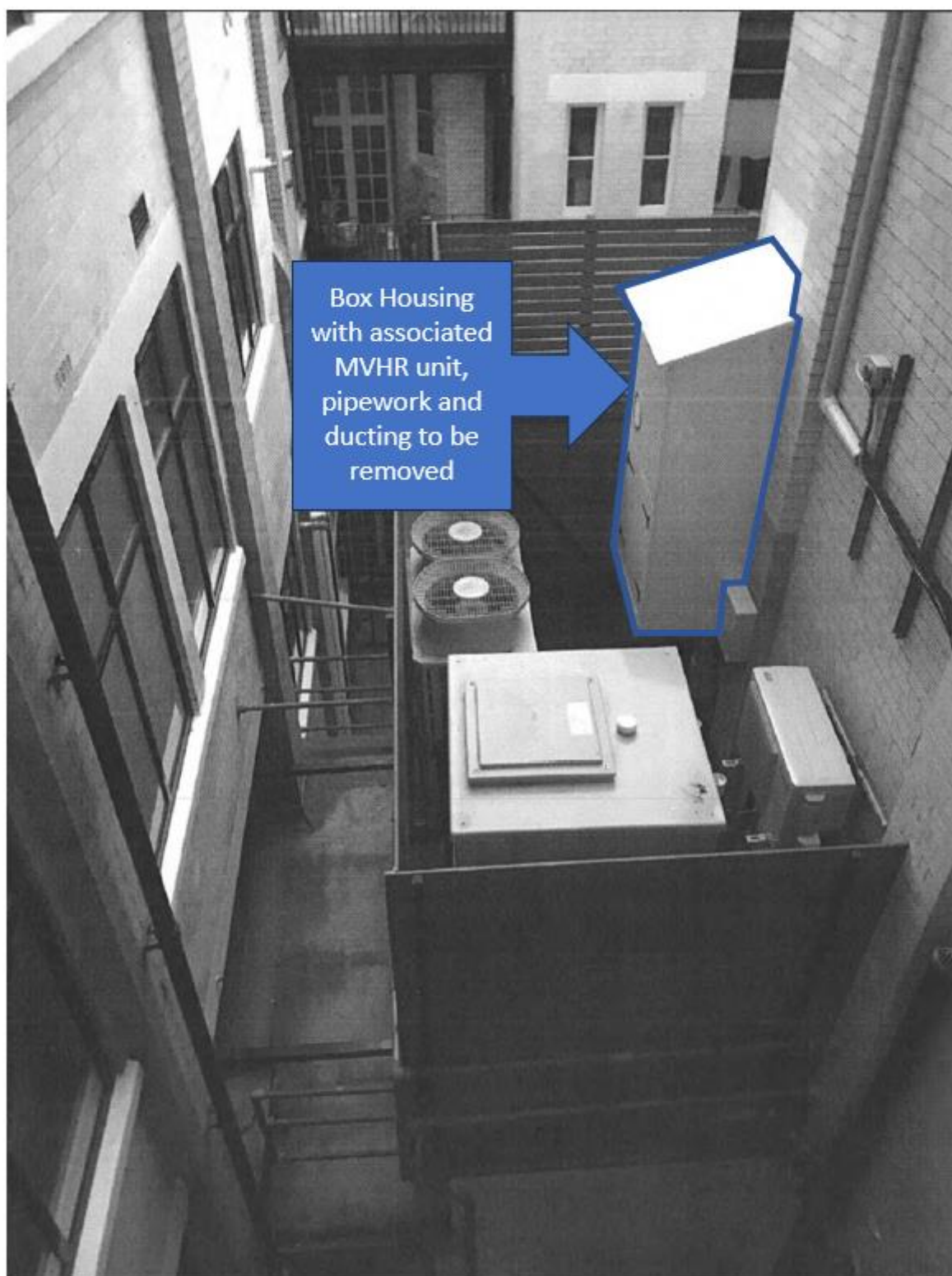
Air conditioning unit to be removed
224-228 Great Portland Street
London
W1W 5QP

PHOTOGRAPH C



Screen around plant area to be removed
224-228 Great Portland Street
London
W1W 5QP

PHOTOGRAPH D



Box housing with associated MVHR unit, pipework and ducting to be removed
224-228 Great Portland Street
London
W1W 5QP