



Appeal Decisions

Hearing held on 29 April 2025

Site visit made on 29 April 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7 May 2025

Appeal A Ref: APP/X5990/C/25/3359368 (Heat Pump)

55 Shirland Road, London W9 2JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Josph De Klee of The Hero at Maida Limited against an enforcement notice issued by Westminster City Council.
- The notice was issued on 20 December 2024.
- The breach of planning control as alleged in the notice is “*Without the requisite planning permission and within the last 10 years, the installation of a heat pump unit (as shown in attached Photograph A1) and associated fixtures and fittings at rear ground floor level*”.
- The requirements of the notice are to:
 - (1) Remove the unauthorised heat pump unit at rear ground floor level and any associated fixtures and fittings (as shown in attached Photograph A1);
 - (2) Make good any damage to the Property caused by the installation and/or removal of the heat pump unit; and
 - (3) Following compliance with steps (1) and (2), remove the heat pump unit, as well as any resulting waste materials and detritus, from the Property.
- The period for compliance with the requirements is within 1 month of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal 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 is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/X5990/C/25/3359369 (Kitchen Duct)

55 Shirland Road, London W9 2JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Josph De Klee of The Hero at Maida Limited against an enforcement notice issued by Westminster City Council.
- The notice was issued on 20 December 2024.
- 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 kitchen ventilation duct on the rear façade from first floor to roof level (as shown in attached Photograph B1) and associated fixtures and fittings*”.
- The requirements of the notice are to:
 - (1) Remove the unauthorised ducting on the rear elevation of the Property and any associated fixtures and fittings (as shown in attached Photograph B1);
 - (2) Make good any damage caused to the Property by the installation and/or removal of the ducting and restore the Property to its former condition; and
 - (3) Following compliance with steps (1) and (2), remove the ducting, as well as any resulting materials and detritus, from the Property.
- The period for compliance with the requirements is within 1 month of the notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal 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 is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Applications for Costs

1. Applications for costs have been made by the appellant against the Council in respect of both appeals. These applications are the subject of a separate decision notice.

Preliminary Matters

2. The appeal property is a public house located along Shirland Road. Appeal A relates to an enforcement notice issued by the Council in respect of a heat pump which has been installed to the rear of the property. Appeal B relates to an enforcement notice issued by the Council in respect of a kitchen ventilation duct which has been installed on the rear façade of the property.
3. The appeal on ground (f) was mistakenly ticked by the appellant on the appeal form for Appeal A, and not Appeal B as intended. During the hearing, the appellant confirmed that the ground (f) appeal relates to Appeal B (kitchen duct) only, and I have proceeded on this basis.

APPEAL A – HEAT PUMP

Ground (a)

Main Issue

4. The sole main issue in respect of ground (a), being the deemed planning application for the development alleged in the notice, is its effect on the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

5. There is a courtyard to the rear of the appeal property which sits slightly lower than ground floor level. Within this courtyard, there is a small storeroom in a gap between the rear façade of the appeal property and the side elevation of an adjacent building. The heat pump unit sits on a discreet platform above this storeroom.
6. The Council's Environmental Supplementary Planning Document (2022) (ESPD) recognises that Westminster "*is a noisy city within a global city*", where ambient noise levels "*exceed those of the rest of the UK*". Any noise impact of new plant must be assessed within this context, where a variety of uses, including commercial and residential uses, operate alongside one another.
7. The appellant commissioned a Noise Impact Assessment (NIA) to assess the noise impact of the heat pump unit in its current location. The NIA recommends certain attenuation measures to mitigate the noise impacts of the plant, including acoustic wall lining and acoustic screens within the plant area. Subject to these attenuation measures, the NIA concludes that noise from the heat pump would comply with all the requisite noise standards set out in the Council's ESPD, even when measured at the nearest sensitive receptors. The Council does not dispute these conclusions.
8. Subject to these attenuation measures, which can be secured by condition, I am therefore satisfied the heat pump unit would not harm the living conditions of neighbouring occupiers. It would be consistent with Policies 7, 22 and 38 of the Westminster City Plan 2019 – 2040 (2021) (City Plan), which together promote a good standard of residential amenity for local residents, by protecting them from

unacceptable noise impacts. The development would also be consistent with Policies D13 and D14 of the London Plan (2021), both of which have similar amenity objectives, whilst also acknowledging that unreasonable restrictions should not be placed on existing noise generating uses. Finally, the development would be consistent with the noise standards set out in the Council's ESPD and the amenity objectives of the National Planning Policy Framework 2024 (Framework).

Other Matters

9. Noise complaints have been received by the Council in relation to the operation of the heat pump, many of which relate to its operation during the night. Going forwards, a condition will restrict its operation to daytime and evening trading hours, thereby protecting neighbours from unacceptable noise impacts during the night. A condition will also ensure the plant continues to adhere to the noise standards set out in the Council's ESPD.
10. Complaints have also been raised with regard to general pub noise, including noise from patrons. However, the prevailing use of the appeal property as a public house is not in dispute, and such complaints are not relevant to the acceptability of the heat pump.
11. The Council suggests the noise attenuation measures should be subject to a planning application, to ensure they are properly consulted upon. However, given the consultation carried out in connection with these appeals, I am satisfied neighbours have been given sufficient opportunity to comment. The attenuation measures clearly relate to the development alleged in the notice, and consistent with the position established in *Bhandal*¹, I am also satisfied they can be secured as part of the ground (a) appeal.

Conditions

12. I have reviewed the list of conditions suggested by the parties in line with the Framework and Planning Practice Guidance.
13. I have included a condition which requires details of the attenuation measures to be submitted to the Council for approval. Subsequently, these measures must be implemented and retained as approved (condition 1). This is to ensure the noise impact of the heat pump unit is acceptable. There is a strict timetable for compliance because the permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the acoustic measures before the development takes place. As worded, the condition will ensure the development can be enforced against if the requirements are not met.
14. I have included a condition which restricts the operating hours of the heat pump, to ensure noise is not experienced by neighbouring residents during the night (condition 2). I have also included a condition which limits overall noise levels from the plant, to ensure its impact remains acceptable (condition 3). I have deleted Part 3 from the draft condition, which provided an optional route to obtain a fixed background noise level. Instead, I have simplified the wording, so this is possible with written agreement of the Council. This ensures some flexibility to overall noise limits if ambient background noise levels were to change in future.

¹ *Bhandal v SSHCLG & Bromsgrove DC* [2020] EWHC 2724 (Admin) [2021] JPL 611

15. Finally, I have included a condition which limits vibration levels from the plant, in accordance with British Standard 6472 (2008) (Guide to evaluation of human exposure to vibration in buildings) (condition 4). This is again to protect neighbouring amenity.

Conclusion (Appeal A)

16. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice, and the enforcement notice will be quashed.
17. In these circumstances the appeal on ground (g) does not fall to be considered.

APPEAL B (KITCHEN DUCT)

18. There is already an authorised ventilation duct on the rear façade of the appeal property, which serves the kitchen situated at basement level. This duct is located on the wall to the east of the outrigger. The duct which is the subject of Appeal B serves the kitchen at first floor level, and is sited to the other side of the outrigger.

Ground (a)

Main Issues

19. The main issues in connection with the kitchen ventilation duct are:
- its effect or potential effect on the living conditions of neighbouring occupiers, with particular regard to noise; and
 - its effect on the character and appearance of the area, including whether it preserves or enhances the character or appearance of the Maida Vale Conservation Area.

Reasons

Living Conditions

20. The appellant commissioned a Noise Impact Assessment (NIA) in connection with the new ventilation duct. Subject to attenuation measures, which comprise a supply inlet attenuator and an extract discharge attenuator, the NIA concludes the ventilation duct would comply with all the requisite noise standards set out in the Council's ESPD, even when measured at the nearest sensitive receptors. The Council does not dispute these conclusions.
21. Subject to these attenuation measures being secured long term, I am therefore satisfied the duct would not harm the living conditions of neighbouring occupiers. Much like above, it would be consistent with Policies 7, 22 and 38 of the City Plan and Policies D13 and D14 of the London Plan insofar as they seek to protect neighbouring amenity. The development would also be consistent with the noise standards set out in the Council's ESPD and the amenity objectives of the National Planning Policy Framework 2024 (Framework).

Character and Appearance

22. The appeal property is within the Maida Vale Conservation Area (CA). Much of the significance of the CA is derived from its tree-lined streets, vistas and private amenity spaces, all of which contribute to the CA's leafy and verdant character. The

Council's General Information Leaflet (2004) also highlights the mix of land uses within the CA, which include residential, retail and commercial uses, which further contributes to its character and significance.

23. The appeal site comprises the recently refurbished Hero of Maida Vale public house, which is situated on the north side of Shirland Road on the corner of Elnathan Mews. Its frontage incorporates wooden panelling and green tiles at ground floor level, and its upper floors comprise a traditional brick façade with decorative moulding around its sash windows. These features give the pub an attractive and traditional appearance which is in-keeping with its origins as a public house. In turn, it makes a positive contribution to the street scene along this part of Shirland Road.
24. The ventilation duct is sited on the rear façade of the pub, and is not readily visible from Shirland Road. This means it does not interfere with the pub's frontage, nor the contribution it makes to the Shirland Road street scene. Whilst the duct is visible from certain public vantage points to the rear of the pub, it matches the tone and colour of the brickwork and the other authorised duct, which ensures it assimilates effectively with the building's rear façade. Although the duct does add more visual clutter to this façade, such plant is typical of the overall commercial character of the building, given its long-standing use as a public house.
25. For these reasons, I am satisfied the duct does not harm the character and appearance of the area, nor the character and appearance of the CA. It is consistent with Policies 7, 38, 39 and 40 of the City Plan and Policy HC1 of the London Plan. Together, these policies require development to achieve high quality design which responds positively to local character, and to safeguard the area's heritage assets. The development is also consistent with the design and heritage objectives of the Council's ESPD, the Council's Development and Demolition in Conservation Areas SPG (2004) and the Framework.
26. In reaching this conclusion, I have had special regard to the desirability of preserving or enhancing the character or appearance of the CA, in accordance with my statutory duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Matters

27. As above, a condition will be imposed to ensure operating hours of the duct are restricted to pub trading hours. This will protect neighbours from unacceptable noise impacts during the night. A condition will also ensure the duct continues to adhere to the noise standards set out in the Council's ESPD.
28. Once again, complaints relating to general pub noise are not directly relevant to the acceptability of the duct, given the overarching use of the property as a public house is not disputed.

Conditions

29. As above, I have reviewed the list of conditions suggested by the parties in line with the Framework and Planning Practice Guidance.
30. I have included a condition which requires the attenuation measures set out in the NIA to be retained for the lifetime of the development (condition 1). This is to ensure the continued acceptability of the duct in terms of noise. For similar

reasons, I have included a condition which restricts the operating hours of the duct, to ensure no noise impact is experienced by neighbouring residents during the night (condition 2).

31. I have also included a condition which limits overall noise levels from the plant, to ensure its amenity impact remains acceptable (condition 3). I have amended this in the same way as the condition relating to the heat pump. For the reasons noted above, I have also included the same condition to control vibration (condition 4).
32. Finally, I have included a condition which requires the duct to be retained in its current paint colours, which are in-keeping with the colours of the building and pre-existing duct (condition 5). Visually, this will ensure the duct continues to integrate effectively with the building.

Conclusion (Appeal B)

33. For the reasons given, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the development as described in the notice, and the enforcement notice will be quashed.
34. In these circumstances the appeal on grounds (f) and (g) do not fall to be considered.

Formal Decisions

Appeal A

35. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the installation of a heat pump unit and associated fixtures and fittings at 55 Shirland Road, London W9 2JD as shown on the plan attached to the notice and subject to the conditions set out in the Schedule to this decision.

Appeal B

36. Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the installation of a kitchen ventilation duct on the rear façade from first floor to roof level and associated fixtures and fittings at 55 Shirland Road, London W9 2JD as shown on the plan attached to the notice and subject to the conditions set out in the Schedule to this decision.

James Blackwell

INSPECTOR

Schedule of Conditions (Appeal A – Heat Pump)

- 1) Unless within 2 months of the date of this decision, details of the noise attenuation measures set out in the Noise Impact Assessment (Noise Solutions Ltd, dated 22 July 2024 and revised on 24 October 2024) are submitted in writing to the local planning authority for approval, and unless the approved attenuation measures are implemented within two months of the local planning authority's approval, use of the heat pump shall cease until such time as the details have been approved and implemented. Following implementation, the noise attenuation measures shall thereafter be retained as approved.
- 2) The heat pump will operate between 0900 to 2300 hours on Mondays – Sundays only and not at any other times.
- 3) Where noise emitted from the approved plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 5dB below the minimum external background noise level, when measured at a point of 1 metre outside any window of any residential or other noise sensitive property, unless otherwise agreed by the Council in writing.

Where noise emitted from the approved plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10dB below the minimum external background noise, when measured at a point of 1 metre outside of any window of any residential or other noise sensitive property, unless otherwise agreed by the Council in writing.

- 4) No vibration shall be transmitted to adjoining premises and structures through the building structure and fabric of the approved development so as to cause a vibration dose value greater than 0.4m.s (1.75) during the 16-hour daytime period (0700 – 2300 hours) nor 0.2m.s (1.75) during the 8-hour night time period (2300 – 0700 hours) (as set out in BS 6472 (2008)), in any part of a residential or other noise sensitive property.

Schedule of Conditions (Appeal B – Duct)

- 1) The noise attenuation measures set out in the Noise Impact Assessment (Noise Solutions Ltd, dated 25 January 2024 and revised on 24 October 2024) shall be retained for the lifetime of the development.
- 2) The duct will operate between 0700 to 2300 hours on Mondays – Sundays only and not at any other times.
- 3) Where noise emitted from the approved plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 5dB below the minimum external background noise level, when measured at a point of 1 metre outside any window of any

residential or other noise sensitive property, unless otherwise agreed by the Council in writing.

Where noise emitted from the approved plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10dB below the minimum external background noise, when measured at a point of 1 metre outside of any window of any residential or other noise sensitive property, unless otherwise agreed by the Council in writing.

- 4) No vibration shall be transmitted to adjoining premises and structures through the building structure and fabric of the approved development so as to cause a vibration dose value greater than 0.4m.s (1.75) during the 16-hour daytime period (0700 – 2300 hours) nor 0.2m.s (1.75) during the 8-hour night time period (2300 – 0700 hours) (as set out in BS 6472 (2008)), in any part of a residential or other noise sensitive property.
- 5) The paint on the ducting will be retained to match existing brick colour (RAL 7006) below roof level and to match the existing slate colour (RAL 7016) at roof level. The duct shall be maintained in these colours for the lifetime of the development.

APPEARANCES

FOR THE APPELLANT:

Ed Grant (Counsel, Cornerstone Barristers)
Mark Shearman BSc (Hons) MA MRTPI (Director, Firstplan)
George Creamer BA (Hons) MRTPI (Associate, Firstplan)
Joseph De Klee (Studio Director, PHG)
Danielle Coglin BA (Hons) LLM (Solicitor, Howard Kennedy LLP)

FOR THE COUNCIL:

Zia Sarkar (Senior Planning Officer)

INTERESTED PARTIES:

Michael Stebbing (Neighbour)