



Appeal Decisions

Site visit made on 25 March 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2025

Appeal A Ref: APP/Y5420/C/23/3325165

Appeal B Ref: APP/Y5420/C/23/3325166

First Floor Flat (Flat B), 7 Warham Road, Hornsey, London N4 1AR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Evangelos Skoufoglou and Appeal B by Mrs Isabella Sabatini against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 30 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of an air source heat pump on the roof of a rear outrigger roof extension.
 - The requirements of the notice are to:
 1. Remove the air source heat pump, including all fixtures and fittings, from the roof of a rear outrigger roof extension in its entirety.
 2. Remove from the land any debris resulting from carrying out step 1) above.
 - The period for compliance with the requirements is stated as 4 September 2023.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeals are allowed, and the enforcement notice is quashed.

The appeals on grounds (b) and (c)

2. The grounds of appeal are (b) that the matter alleged has not occurred and (c) that those matters (if they occurred) do not constitute a breach of planning control. The burden of proof is on the appellants to make out their case to the standard of the balance of probabilities.
3. To succeed on ground (b) the appellants would need to demonstrate that an air source heat pump (ASHP) had not been installed on the roof of the rear outrigger. Since there is no dispute that an ASHP has been installed, which I saw, the appeals on ground (b) fail.
4. The appellants' case on ground (c) is that the ASHP constitutes permitted development by virtue of Part 14 Class G of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO), which grants planning permission, subject to limitations and conditions, for the installation, alteration or replacement of a microgeneration air source heat pump—(a) on a dwellinghouse or a block of flats; or (b) within the curtilage of a dwellinghouse or a block of flats, including on a building within that curtilage.
5. The issue in this case is whether the ASHP complies with the limitation at paragraph G.1. which states that development is not permitted by Class G unless the air source heat pump complies with the MCS Planning Standards or equivalent

standards. There is no dispute that the ASHP complies with the other limitations and conditions of Class G.

6. The MCS Planning Standards for ASHPs is as follows: (a) The air source heat pump product shall be certificated in accordance with MCS 007 (b) The air source heat pump shall be installed by an MCS contractor in accordance with MIS 3005, and (c) The installation shall be carried out in compliance with the calculation procedure contained in Table 2. MCS contractors must complete the 'results/notes' column in Table 2 for each step of the calculation procedure to show how it has been followed.
7. If all these requirements are met, the ASHP will constitute permitted development. Whilst I have had regard to the noise impact assessment carried out by Parker Jones acoustics (PJA) and monitoring carried out by the Council's Noise and Nuisance Team, it is not relevant what the results of those surveys are said to show. Similarly, whilst I acknowledge third party representations about noise nuisance, and comments about planning policies, these are matters which relate to planning merits and are not relevant to an appeal on this ground, which concerns matters of fact and planning law.
8. The MCS Standard calculation procedure is what the permitted development right is contingent upon, and as a 'desktop' model for assessing noise it is based on certain standard assumptions (such as the use of 40dB(A)) as the background noise level in all cases – STEP 7) and approximations (for instance, the corrections made under STEP 5 in relation to the attenuating effects of barriers).
9. Whilst acoustic surveys (based on their own assumptions and measurement methods) may produce different results, that is not relevant to the exercise of permitted development.
10. The Council do not dispute that the ASHP is certificated nor that it was installed by an MCS Contractor, and Table 2 was completed. The dispute is about the accuracy of the stated unit sound power level, and therefore the result of the calculation in Table 2.
11. The appellants submitted an acoustic report in which there is a completed Table 2 however, the permitted development requirement is that the MCS contractor completes Table 2. The appellants provided the contractors completed table, and their calculation was based upon a unit sound power level of 55 dB(A) and a distance of four metres to the assessment position, illustrated as being to the edge of the bedroom window at the neighbouring 9 Warham Road. Their final result was a level of 42 dB(A), equal to the permitted limit.
12. The contractor took the sound power level from the product datasheet and the Keymark certificate dated January 2022 which in both cases is stated as 55 dB(A).
13. The Council dispute the accuracy of the stated sound power level and therefore the overall result, which they say could be because of faulty equipment or sub-standard installation. However, this is based upon noise assessments carried out by their Noise and Nuisance Team, which as already stated, have no relevance.
14. PJA consider that the figures used within the appellants' calculation are incorrect and based on the assumption that the manufacturer's claimed sound power level is accurate. They pointed out that the level is referred to as the noise power

emission level in the product datasheet and that there are two footnotes to the stated noise power emission level given in the datasheet, which state that 'In compliance with EN 12102 this includes the acoustic installation kit of the compressor' and 'Certification in process.'

15. They also stated that a more recent Keymark certificate dated February 2023 for the same product, sent to them by Nuenta (the installer) has a stated power level of 58 dB(A). PJA also noted that if searching for data on the product, the majority of manufacturer datasheets now say 58 dB(A). Based upon a unit sound power level of 58 dB(A), the ASHP would exceed the 42 dB(A) limit and would not constitute permitted development.
16. In response the appellants provided correspondence from the manufacturer, in which it is stated that the model installed carries a Keymark certificate dated December 2020 and January 2022 with a sound pressure level of 55 dB. Further, that the 'model uses a different compressor brand from recent heat pump models and was never intended to be provided with an acoustic kit for the compressor. Therefore, your client's Air Source Heat Pump is not fitted with one.'
17. In response to PJA comments about the certification process, the appellants stated that 'Keymark is an independent certification body, their quality mark demonstrates compliance with European standards. This compliance allows the product to be registered on the MCS product database. The installed unit is registered on the MCS product database and holds the relevant certification.'
18. Whilst the terminology and footnotes in the product datasheet are somewhat ambiguous, I find, on the balance of probabilities, that when the ASHP was installed, the sound power level was 55 dB(A). Further, it was certificated and installed by an MCS contractor, in compliance with the calculation procedure contained in Table 2, which was completed by the contractor.
19. I note representations that the ASHP has been used for cooling however, there is no substantive evidence to support this, nor has the Council sought to demonstrate this. Moreover, the appellants stated that the ASHP installed has the ability to cool, but to activate the cooling function in the unit, it must be enabled during the commissioning process and this function is hidden under a level of security that only authorised Ecoforest engineers have access to. It would also require a cooling distribution system that 7b Warham Rd does not have.
20. Having regard to the above, I find that the ASHP constitutes permitted development by virtue of Schedule 2 Part 14 Class G of the GPDO and there is no breach of planning control. The appeals on ground (c) succeed.

Conclusion

21. For the reasons given above, I conclude that the appeals should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (f) and (g) do not fall to be considered.

Felicity Thompson

INSPECTOR