



Appeal Decisions

Site visit made on 4 March 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal A Ref: APP/X5210/C/24/3340242

Appeal B Ref: APP/X5210/C/24/3367550

40 Hillway, London N6 6HH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Anthony Bandak (Appeal A) and Susanne Bandak (Appeal B) against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 25 January 2024.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of 3 x air condenser units to the rear roof of the single storey ground floor extension.
- The requirements of the notice are to:
 1. Completely remove the 3 air conditioning units; and
 2. Remove any resulting debris from the site and make good any resulting damage.
- The period for compliance with the requirements is within one month of the notice taking effect.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (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.
- Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals succeed in part, but are otherwise dismissed. The enforcement notice is varied and upheld in the terms set out in the formal decision and planning permission is refused.

Appeal C Ref: APP/X5210/W/24/3340566

40 Hillway, Camden, London N6 6HH

- 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 Tony Bandak against the decision of the Council of the London Borough of Camden.
- The application Ref is 2023/2242/P.
- The development proposed is the Installation of air conditioning units & associated acoustic enclosure (resubmission with overheating assessment added).

Summary Decision: The appeal is dismissed.

Procedural Matter – Appeal A and Appeal B

1. As the two individuals named in the header above made an appeal against the enforcement notice, these should have been acknowledged as separate appeals and given separate appeal reference numbers at the start of the appeal process. The appeal made by Susanne Bandak has now been given a separate appeal reference and will be referred to as Appeal B for the purposes of these decisions. It has been linked to the lead appeal, Appeal A, and to Appeal C.

2. Accordingly, I will determine two ground (c), (f) and (g) appeals. However, as only one fee was paid for the deemed planning application, I am only able to determine one ground (a) appeal, which is that made on the lead case, i.e. Appeal A.

Ground (c) – Appeal A and Appeal B

3. To succeed on ground (c), the appellants must demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellants.
4. The development alleged is the installation of three air condensing units, which I will refer to from hereon in as the “AC units”. There is no suggestion that the installation of the AC units does not comprise an operation for the purposes of section 55(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act). Indeed, I have no doubt that the installation of the AC units comprised works similar to those described by the Inspector in paragraph 5 of the appeal decision referred to by the appellants¹. However, in making their ground (c) appeal, the appellants refer to section 55(2) of the 1990 Act, which informs that certain operations shall not be taken for the purposes of the Act to involve development of the land. These include the carrying out for the alteration of any building of works which do not materially affect the external appearance of the building².
5. The appeal decision provided by the appellants refers to the case of *Burroughs Day v Bristol CC* [1996] 1 PLR 78; 1 EGLR 167, which is of assistance in establishing whether certain operations might benefit from the exception set out in section 55(2)(a)(ii) of the 1990 Act. It informs that one should consider the change to the external appearance of the building as a whole and not a part in isolation; the degree of visibility by an observer outside the building; the nature of the building; and the nature of the alterations.
6. I can agree that the AC units have a particularly utilitarian appearance that is not typical of a domestic property. The AC units are bulky and, therefore, prominent, even when viewed against the building as a whole. The AC units are fitted on a flat roof that includes a parapet wall detail where the finished height of the external wall of the extension exceeds the height of the flat roof. Nevertheless, the height of all three AC units exceeds that of the parapet wall.
7. Due to the topography of the surrounding area, I can be in no doubt that the AC units would be visible from the garden of the adjoining property at 42 Hillway, despite the location of the AC units, towards the back of the flat roof. The AC units would also be highly visible from the windows in the side elevation of No 42. Indeed, I note the photographs provided by the occupier of this property, which show the AC units in clear view from within the adjoining property.
8. The AC units are likely to be less visible or prominent in views from the garden area serving 38 Hillway, which is at a lower level to the appeal site. Furthermore, having noted the location of the windows in the first floor rear elevation of this adjoining property, the AC units are only likely to be visible from this vantage point at an angle. Nevertheless, I have no reason to dispute the representations of this adjoining occupier, that the AC units can be seen from their property.

¹ Appeals reference APP/X5210/C/00/1042558 and APP/X5210/A/00/1045145

² Section 55(2)(a)(ii) of the 1990 Act.

9. During the site visit I took time to observe the appeal site from Makepeace Ave, including the walkway elevated above the carriageway. In some views the ground floor of the appeal property and the AC units were obscured by the property at No 42. However, there were still vantage points along Makepeace Ave where I could see the units, although I acknowledge that these views were at a distance.
10. As for views from the building to the rear of the appeal site, views from any windows in its side elevation facing the AC units are obscured by the mature tree line along this boundary.
11. The AC units can be viewed from several vantage points outside of the appeal site and they are particularly prominent in some. I do not, therefore, consider there to be a limited degree of visibility of the units by an observer outside the building. The prominence of the units is exacerbated by their size, utilitarian appearance and the backdrop against which they are viewed. Accordingly, I find that, as a matter of fact and degree, the installation of 3 AC units is an operation that, on balance, materially alters the external appearance of the appeal building. Accordingly, the operation involves the development of the land for which permission is required, in accordance with section 57 of the 1990 Act.
12. I have had regard to the appeal decision brought to my attention by the appellants. I note that the particular circumstances of that case led to the Inspector's conclusions in that decision. In that case the Inspector notes that none of the units are visible from the street level and that, having regard to the location of some of the units, they find the effect to be insignificant. As for the others, they refer to indirect views and that the units would not be noticeable against the existing visual clutter of the building's windows and pipes. This does not compare to the particular circumstances of the case before me, which is that the units are visible from street level; that there are direct views of the units at close quarters; and that, against the backdrop of the lightly rendered finish of the property, the AC units are bulky and prominent when viewed from a number of vantage points. This appeal decision does not, therefore, alter my findings above.
13. The appellants claims that the AC units otherwise have the benefit of the planning permission granted by Part 1 of Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order), which permits development within the curtilage of a dwellinghouse. In response to this, the Council suggest that the development does not fall within the provisions of Part 1. Instead, the Council say that the development is an engineering operation.
14. The building in question is clearly a dwellinghouse and I have concluded above that the installation of the AC units are a material alteration to the dwellinghouse. The AC units might well be regarded as mechanical equipment. It does not change that they have been fitted to the dwellinghouse resulting in an alteration to its appearance. Whilst I note that there are specific classes of permitted development for the installation of heating equipment, this does not persuade me that the AC units in this case do not benefit from the provisions of Part 1.
15. The appellants refers to Class A of Part 1, Article 3, Schedule 2 of the 2015 Order, which permits the enlargement, improvement or other alteration of a dwellinghouse. The criteria set out in A.1. and A.2. specify the type of development that would not be permitted by Class A. Whilst the Council suggest that the development is not

- permitted by Class A as it falls within criterion (i) of A.1. of Class A, I cannot agree. Unlike other criteria of A.1. that specifically refer to enlargements, improvement and alterations, criterion (i) refers only to an enlargement of a dwellinghouse. The development in question is an alteration to the dwellinghouse and not an enlargement to it.
16. Notwithstanding this, criterion (k)(iv) means that development would not be permitted by Class A if it would consist of or include an alteration to any part of the roof of the dwellinghouse. The AC units are fitted to the roof of the extension. They do not, therefore, benefit from the permission granted by Class A as they consist of an alteration to the roof of the dwellinghouse.
17. Notwithstanding the above, condition A.3. (a) of the permission granted by Class A requires that the materials used in any exterior work be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. I acknowledge there would have been little choice in the exterior finish of the AC units. Nevertheless, the external materials of the AC units, including the type and colour of their finish, is materially different to the materials used in the exterior of the existing dwellinghouse. I cannot, therefore, be satisfied that the development complies with the requirements of the condition. Accordingly, even if the development did not fall within any of the criteria of A.1. or A.2., it is not permitted by Class A as it does not comply with the conditions of the permission.
18. Class B and Class C of Part 1, Article 3, Schedule 2 of the 2015 Order relate to additions and alterations to the roof of a dwellinghouse. The development does not, however, benefit from the permission granted by Class B as this only permits the enlargement of a dwellinghouse. The development in this case does not comprise the enlargement of the dwellinghouse. Class C, on the other hand, permits any other alteration to the roof of a dwellinghouse. C.1. of Class C sets out the types of development that would not be permitted by Class C. This includes at criterion (b) an alteration that would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof.
19. The flat roof of the extension is the roof that has been altered by the addition of the AC units. It is, therefore, the original roof for the purposes of Class C. There can be no doubt that the AC units exceed 0.15 metres beyond the plane of the roof. For this reason, the development does not benefit from the permission granted by Class C.
20. Bringing all of the above together, I have not been made aware of any reason why the development in question does not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act. Furthermore, I cannot be satisfied that the necessary planning permission has been granted. Accordingly, and on the balance of probability, I conclude that the matters alleged in the notice constitute a breach of planning control. The appeal on ground (c) should, therefore, fail.

Ground (a), the Deemed Application for Planning Permission and the Appeal Against the Refusal of Planning Permission – Appeal A and Appeal C

Preliminary Matters

21. The plans upon which the Council's refusal is based (i.e. those subject of Appeal C) show a proposal that differs substantially from the development that is the subject of Appeal A in terms of its size, location and design. The AC units subject of Appeal A are not enclosed and are located close to the rear elevation of the dwelling at first floor. The AC units subject of Appeal C would be located further from the rear first floor elevation and would be housed within a single louvered acoustic enclosure with a lid.
22. Despite these differences, I have considered the appeals together, but have determined Appeal A on the basis of existing development and Appeal C on the basis of development proposed. Where necessary, I have also considered the effects of each scheme separately.

Main Issues

23. Having regard to the Council's reasons for refusal of the planning application and the substantive reasons for issuing the enforcement notice, I have identified the main issues in this case as follows:
- The effect of the development on the character and appearance of the site and surrounding area. Important to this is whether or not the development preserves or enhances the character or appearance of the Holly Lodge Conservation Area (HLCA); and
 - The effect of the development on climate change.

Reasons

Character and Appearance

Legislation, Policy and Guidance:

24. As the appeal site is located within a designated heritage asset, the HLCA, I must have regard to the duty imposed under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. This requires that, in determining these appeals, I must pay special attention to the desirability of preserving or enhancing the character or appearance of the HLCA.
25. The guidance in the historic environment chapter of the National Planning Policy Framework (the Framework) informs that heritage assets should be conserved in a manner appropriate to their significance. Paragraph 205 informs that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 206 goes on to say that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
26. The development plan for the area includes the Camden Local Plan 2017 (CLP). Policy D1 (Design) informs that development will be required, amongst other matters, to respect local context and character; comprise details and materials that

are of high quality and complement the local character; and preserve or enhance the historic environment and heritage assets in accordance with Policy D2 (Heritage). Policy D2 reflects the statutory duty for conservation areas, and informs that development in conservation areas will be required to preserve or, where possible, enhance the character or appearance of the area.

27. The development plan also includes the Highgate Neighbourhood Plan, made on 11 September 2017 (HNP). As with CLP Policy D2, HNP Policy DH2 (Development Proposals in Highgate's Conservation Areas) reflects the statutory duty. Although Policy DH1 of the HNP has been referred to, the relevance of this Policy is not obvious to me. This relates to demolition within the HLCA; the proposal does not include demolition.

The Site and Surrounding Area:

28. The appeal site is occupied by a 2 storey detached residential dwelling, extended to the rear with a single storey flat roof extension, which includes a parapet wall detail.
29. The Holly Lodge Estate Conservation Area Appraisal and Management Strategy, adopted 6 December 2012 (CAAMS) informs that the building occupying the appeal site dates from the early 20th century. It is located within the Holly Lodge Estate, which is described as being a distinctive planned development in the garden suburb tradition. The appeal property is typical of the garden suburb style and is entirely similar to the other large detached property within this part of the HLCA. Although extended to the rear, this property has retained its historic character and charm.
30. Pertinent to the main issue identified above, the CAAMS makes clear that the special interest and significance of the HLCA is derived in part from the architectural style of buildings in the area, where there is a prevalence of certain historical architectural features in houses across the conservation area.

Appeal A Scheme:

31. As I have already noted above, the development subject of Appeal A comprises the installation of 3 AC units located on the flat roof of the single storey extension, towards the rear of the roof. Although not as substantial as the development comprised in the Appeal C scheme, the AC units are still bulky and are positioned in a row that spans across most of the width of the rear elevation of the first floor annexe.
32. The height of the AC units are such that they protrude above the parapet detail and, although located towards the back of the roof, are still visible and prominent when viewed from adjoining properties.
33. The AC units have an overtly utilitarian appearance that is out of place within this domestic setting. This, combined with their first floor location, mean that they cause harm to the character and appearance of the building. Whilst the AC units are located to the rear of the appeal building, they are nevertheless incongruous within this historic environment and detract from the architectural value of the appeal building. For this reason, the development is detrimental to the contribution this building makes to the special interest and significance of the HLCA. It neither preserves nor enhances the character or appearance of the HLCA.

Appeal C Scheme:

34. The development subject of Appeal C is described as the installation of AC units with associated acoustic enclosure. The plans that are the subject of the Council's refusal indicate that the AC units would be housed within a single louvered acoustic enclosure with a lid. This would be located between the first floor rear elevation of the property and the centre of the flat roof. It would also span across almost the full width of the first floor rear annexe.
35. Having regard to the dimensions of the proposed louvered enclosure, it would be a substantial addition to the roof of the rear extension. Its location, forward of the rear first floor elevation, its height above the parapet detail, and its span across a large part of the extension roof would make this a visually prominent addition to the building, particularly when viewed from the properties either side of the appeal site. The proposed enclosure would also be more prominent when viewed from Makepeace Ave, particularly when compared to the existing AC units present on the building.
36. Whilst not as utilitarian in its appearance as the AC units themselves, the louvered enclosure would be an odd addition to the extension roof. It would appear out of character within its domestic setting. Although I acknowledge that the proposal would be located to the rear of the appeal building, it would nevertheless be incongruous within this historic environment and would detract from the architectural value of the building. For this reason, the proposal would cause harm to the character and appearance of the building and, therefore, detriment to the contribution this building makes to the special interest and significance of the HLCA. It neither preserves nor enhances the character or appearance of the HLCA.

Heritage Balance – Appeal A and Appal B Schemes:

37. For the purposes of the relevant paragraphs of the Framework, I find the harm caused to the heritage asset by the Appeal A scheme is less than substantial, but nevertheless of considerable importance and weight. I conclude the same with regard to the Appeal C scheme. In these circumstances, paragraph 208 of the Framework informs that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
38. I note the suggested benefit to the living conditions of the occupiers of the appeal property that would result from either scheme. Whilst such matters might weigh in the planning balance, I cannot regard this as a public benefit for the purposes of paragraph 208 of the Framework. If implemented, the proposed scheme is likely to result in the need to employ a tradesperson to carry out the work, resulting in some economic benefit. Such a public benefit would, however, be limited, having regard to the extent of the works necessary to implement the scheme.
39. All things considered, the effect on the character and appearance of the site and surrounding area for both schemes is unacceptable and both fail to preserve or enhance the character or appearance of the HLCA. Even if I were to agree with the appellant on the level of harm caused to the significance of the designated heritage asset, I cannot be satisfied that any clear and convincing justification exists for that harm. The Framework makes clear that great weight should be given to the

conservation of a heritage asset. The public benefits I have identified are not sufficient to outweigh the harm to the character and appearance and thus significance of the HLCA.

40. Accordingly, I conclude that both schemes of development are in conflict with Policies D1 and D2 of the CLP, Policy DH2 of the HNP and the advice and guidance within the CAAMS. The schemes also conflict with the Framework.

Climate Change

41. With regard to this second main issue, I have considered both schemes together. There is no suggestion that there is a difference between the AC units at the appeal site at present and those proposed as part of the Appeal C scheme.
42. In order to demonstrate that the development is in compliance with the policy and guidance referred to by the parties, the appellant has provided an Energy and Overheating Assessment (EOA). In the methodology, it says that the 'assessment outlines the energy demand from the development together with the associated CO₂ emissions'. However, the assessment appears to have been prepared on the basis that either the dwelling as a whole, or the single storey extension are 'the development' or 'project' in this case, and not the AC units themselves.
43. To be clear, neither the dwellinghouse nor the extension are the subject of the appeals before me. The dwellinghouse, as extended, is existing and whether or not it complies with the relevant policies is not a matter for me to consider. The scheme subject of both appeals involves the provision of three AC units on the roof of the single storey extension to provide air conditioning and air filtering within the appeal property. This is referred to by the parties as 'active cooling'. My approach to the relevant policy and guidance is, therefore, to apply it to the development itself and not to the building that the development serves.
44. With this in mind, there can be no doubt that the development requires the use of energy to fulfil its purpose. The specification sheet indicates that a power source is needed to operate the AC units. As such, Policy CC1 (Climate change mitigation) of the CLP is clearly of relevance to the determination of the appeals. It requires all new development to minimise the effects of climate change. To achieve this the Policy promotes zero carbon development and expects all development to optimise resource efficiency.
45. I cannot agree with the appellant's suggestion that Policy CC1 applies only to major development. Other than reference in criterion b. to 'major development' and in criterion e, to 'substantial demolition', the Policy clearly states that its requirements, including those mentioned above, relate to all development. Accordingly, in order to comply with the Policy it must be demonstrated that the development achieves zero carbon emissions and optimises energy efficiency.
46. Both parties have referred to 'the energy hierarchy', and I note that criterion a. of Policy CC1 requires all development to reduce carbon dioxide emissions through following the steps in the energy hierarchy. At paragraph 8.7 of the CLP, the supporting text explains that 'the energy hierarchy is a sequence of steps that minimise the energy consumption of a building'. The supporting text of the Policy and the Camden Planning Guidance on Energy efficiency and adaption dated January 2021 (EEA) explain the energy hierarchy, which is to use less energy, supply energy efficiently, and use renewable energy. The key message in the EEA

is that all development is expected to reduce carbon dioxide emissions by following the hierarchy.

47. In applying the hierarchy in this case, the appellant's EOA refers to the implementation of energy efficient measures within the property and suggests that, having regard to these, the use of active cooling does not (or would not) lead to any increase in carbon emissions. Indeed, it is suggested that, with the energy efficiency measures, the property achieves a 38.7% improvement on carbon dioxide savings, regardless of whether or not the AC units are present.
48. If I have understood the appellant's case correctly, the claim is that the energy consumption of the development is (or can be) offset by the reduction of energy consumption elsewhere in the property. To demonstrate this, the EOA includes at its appendices two sets of calculations that have been undertaken. As I understand it, the first set of calculations are based on the property as it existed prior to the recent extension and the extensive refurbishment works that have been undertaken. The second set of calculations relate to the property as extended and refurbished.
49. I can see that the carbon dioxide savings per year, brought about by the energy efficiency measures set out in the EOA, might far exceed the carbon dioxide emissions per year produced by the active cooling system. However, the 'measures' referred to in the EOA appear, on the whole, to have already been carried out as part of the works to extend and refurbish the property. Indeed, some of the measures may have been carried out in order to comply with the building control legislation that relates to new extensions. They cannot, therefore, be considered as measures proposed in mitigation of (i.e. to off-set) the carbon dioxide emissions that result from the AC units.
50. For example, the assessment appears to take account of how the extension has been designed and constructed, by referring to the 'fabric performance'. It also takes account of existing features within the building, including the U-values for the existing external walls, roof and floor; the use of low energy lighting throughout; existing natural ventilation; and the existing heating and hot water systems.
51. I have no doubt that these existing features have improved the energy efficiency of the property. The energy efficiency savings do not, however, result from the development subject of these appeals. Neither can they reasonably be secured by the planning permissions that are sought, not least because they have already been carried out. Instead, the existing energy efficiency and carbon emissions from the property are the baseline against which the schemes ought to be assessed. For this reason, these existing measures would not justify development that would increase the property's energy consumption by the amounts referred to in the calculations.
52. The only proposed measure I can identify from the assessment is the fitting to the existing plumbing of water efficient fixtures that use low flow rates. The assessment does not, however, clearly indicate what savings would result from this compared to the emissions that would result from the development.
53. The appellant has failed to clearly demonstrate how the AC units themselves comply with the energy hierarchy. I would have expected, for example, details on how the amount of energy the AC units use compares with other active cooling systems; a demonstration that the AC units use energy efficiently; or that they are

largely powered by renewable energy sources. I can see that the EOA considers the use of combined heating and power, and renewable technology, but it dismisses these as unfeasible, or technically and financially unviable. This conclusion in the EOA appears, however, to be based on the use of such renewable energy sources for the supply of energy to the property as a whole, rather than to the AC units alone.

54. I acknowledge that the energy consumption and carbon emissions from the active cooling system might be low when compared with those of the property as a whole. Indeed, this might explain the negligible difference between the with active cooling and without active cooling calculations set out in the carbon dioxide savings table in the EOA. Nevertheless, for the reasons given above, the appellant has failed to demonstrate how either scheme achieves zero carbon and optimises resource efficiency, in accordance with CLP Policy CC1.
55. A number of other policies have been referred to by the parties. Although not referred to in the enforcement notice or the decision notice, there is reference to Policy SI4 (Managing heat risk) of the London Plan March 2021 (LP). I can agree that criterion B does not apply to the schemes before me as they are not major development. However, the cooling hierarchy is of some assistance in considering the need for the development and whether there are other, less harmful options to achieve what the schemes provide. Whether or not an active cooling system is an appropriate response to managing heat risk is a matter I consider later in this decision.
56. Notwithstanding the above, criterion A of Policy SI4 requires proposals to minimise adverse impacts on the urban heat island through such matters as design. I note the advice in paragraph 9.4.4 of the LP, which is that the increased use of AC units is not desirable as, under conventional operation, they expel hot air, thereby adding to the urban heat island effect. Whilst the AC units might cool the property itself, the evidence before me does not demonstrate that it would not have the opposite effect for the wider surroundings. Accordingly, I cannot be satisfied that the design of the schemes minimises the adverse impacts on the urban heat island, in compliance with LP Policy SI4.
57. Policy CC2 (Adapting to climate change) of the CLP requires development to be resilient to climate change. Whilst again this Policy relates to all development, the relevance of this Policy to the particular development subject of the appeals before me is limited. The supporting text indicates that the measures set out in the Policy are to be incorporated into the design of new development. I can appreciate that the measures might be applicable to the construction of, for example, a new building on the appeal site, or the extension or extensive alteration of the appeal building. It is, however, difficult to see how the Policy and the requirement for development to 'adopt appropriate climate change adaptation measures' can be applied to the provision of AC units and, for Appeal C, a proposed enclosure.
58. Whilst the Council suggests that active cooling systems are discouraged by Policy CC2, such systems are only discussed in the Policy's supporting text. The supporting text informs that the use of active cooling systems as part of a scheme of development is unlikely to achieve compliance with the Policy's requirement for the development to be resilient to climate change. Development comprising an active cooling system alone is not, however, directly restricted by the policy itself. The supporting text is relevant to the interpretation of a policy to which it relates,

but it is not itself a policy or part of a policy. That the development may not accord with the supporting text, is not reason to regard it as in conflict with the Policy.

59. Finally, the appellant also refers to Policy SI 2 (Minimising greenhouse gas emissions) of the LP. However, the relevant criteria of this policy relate only to major development, which the schemes of development in this case are not.
60. Notwithstanding the above, the appellant has failed to demonstrate that the development is in accordance with Policy CC1 of the CLP and Policy SI4 of the LP. For this reason, I conclude that neither of the schemes of development subject of these appeals have (or would have) an acceptable effect on climate change.

Other Matters

61. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the schemes of development are contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan.
62. The EOA includes a dynamic overheating analysis. The appellant says that the development need not be assessed against the cooling hierarchy set out in LP Policy SI4. Whilst I have agreed that
63. This attempts to demonstrate that, without active cooling, the property (or parts of the property) fails to meet the assessment criteria applied. The EOA considers certain measures in accordance with those set out in the cooling hierarchy. It is apparent that the analysis was undertaken, having already carried out improvements that satisfy measures 2) and 3) in the hierarchy. It also indicates that, as the building is existing, it is not possible to satisfy measure 1), and that works to satisfy measure 5) would not be sufficient to achieve compliance with the criteria. In short, it suggests that active cooling is the only means to 'maintain comfortable internal temperatures'.
64. I note the Council's concerns with regard to the analysis. Indeed, there is ambiguity in what was actually analysed. The introduction of the cooling strategy refers to the dwelling and yet the 'project' mentioned in table 10 is referred to as the extension. Furthermore, tables 7, 8 and 9 are introduced as a summary of results for bedrooms, and yet the tables themselves refer to the dining/living room and kitchen. For this reason, I find the reliability of the results of the analysis to be limited and can, therefore, only attribute limited weight to the appellant's claims that the property cannot maintain comfortable internal temperatures without an active cooling system in place.
65. Notwithstanding the above, I am told that an occupier of the property has a particular medical condition, whereby reliance on natural ventilation in the property at certain times of the year must be limited and that certain symptoms are brought on by heat. This is corroborated by the correspondence from a medical professional. I acknowledge the benefit of the development to prevent or alleviate the symptoms described. Although it has not been suggested that the public sector

equality duty³ is engaged, I nevertheless attribute weight to these personal circumstances that are directly affected by the development subject of these appeals.

66. Notwithstanding the above, the evidence before me does not demonstrate that other alternatives have been adequately explored. I agree with the Council, that the EOA as a whole does not consider other, more low-energy measures for reducing heat within the property, including those referred to in the supporting text of Policy SI4. Those referred to include solar shading (e.g. thermal blinds or internal shutters) and solar-controlled glazing.
67. Even if I were satisfied that an active cooling system is the only suitable means of cooling and ventilating the property, I cannot be satisfied that there are no other suitable locations for the AC units that would reduce or eliminate the harm to the character and appearance, and thus significance of the HLCA.
68. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not. That includes the personal permission suggested by the appellant. As I cannot be satisfied that the appellant has adequately considered other options that would mitigate or eliminate the harm caused in this case, I cannot conclude that a personal permission would be appropriate.
69. I have noted the objections of interested parties on the matter of noise that might be generated by the AC units. I have reached no conclusion on this as I have found the development to be harmful in other respects.

Planning Balance and Conclusion

70. Whilst I attribute weight to the personal circumstances referred to by the appellant, this has been reduced, having regard to the extent to which other options have been explored. Furthermore, I am mindful of the great weight that should be given to the conservation of a heritage asset. All things considered, I have not been able to identify any material considerations of sufficient weight to indicate that the determination of these appeals should be made otherwise than in accordance with the development plan, when considered as a whole. For these reasons the ground (a) appeal must fail and Appeal C should be dismissed.

Ground (f) – Appeal A and Appeal B

71. The purpose of the enforcement notice is to remedy the breach of planning control alleged. For the appellants to succeed on ground (f), I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control.
72. The appellants' case made under ground (f) is, in essence, that the steps required by the notice are excessive because the development could be made acceptable, subject to other works.
73. I have considered the effect of housing the AC units under Appeal C and have concluded that the housing itself would cause harm. I have no reason to reach a difference conclusion with regard to the proposal to house the AC units subject of

³ Section 149 of the Equality Act 2010.

Appeal A. Notwithstanding this, this alternative would result in the retention of the AC units and would not, therefore, remedy the breach.

74. The appellants have not suggested any alternative steps that would achieve the purpose of remedying the breach of planning control in this case. No other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Ground (g) – Appeal A and Appeal B

75. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 1 month from the date it takes effect. The appellants suggest a period of 6 months would be reasonable. In doing so they refer to the limited availability of builders in London and the time needed to obtain quotes and give instructions, as well as to remove the AC units and make good any damage.
76. I have no doubt that it would be necessary to employ a tradesperson to undertake the works to comply with the notice. Whilst I note the Council's response to the appellants' case, there is nothing to contradict the appellants' claim that it is difficult to secure such a tradesperson in London. Nevertheless, I cannot see that the removal of the AC units would be an overly onerous task and require substantial remediation works. Furthermore, there is also nothing to justify the substantial extension of the period for compliance.
77. Having regard to the nature and extent of the work necessary to comply with the requirements of the notice, I cannot be satisfied that a 6 month period for compliance would be required. There is, however, sufficient justification for the doubling of the period for compliance and conclude that a two month period should reasonably be allowed.
78. For this reason, the ground (g) appeal should succeed to that extent and I shall vary the notice to give a two month period for compliance.

Conclusion – Appeal A and Appeal B

79. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. Otherwise, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Conclusion – Appeal C

80. For the reasons given above, the appeal should be dismissed.

Formal Decision – Appeal A and Appeal B

81. It is directed that the enforcement notice is varied by the deletion from part 5 of "ONE (1) month" and its substitution with "TWO (2) months" as the period for compliance.
82. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision – Appeal C

83. The appeal is dismissed.

J Moss

INSPECTOR