



Appeal Decision

Site visit made on 10 June 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 June 2025

Appeal Ref: APP/J3015/C/24/3341021

19 Dorchester Road, Kimberley, Nottinghamshire NG16 2TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Corrie Johnson against an enforcement notice ("EN") issued by Broxtowe Borough Council.
 - The notice was issued on 12 February 2024.
 - The breach of planning control as alleged in the EN is: Without planning permission:
 - i. the unauthorised erection of a rear extension on the north west elevation of the property shown edged green on the attached Plan.
 - ii. the installation of two ground installed air conditioning units adjacent to the south western gable of the property shown blue on the attached Plan.
 - The requirements of the EN are: You must:
 - i. Reduce the overall width of the rear extension to bring it in line with the south western gable of the property so that it falls within the requirements of Part 1 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015Or
 - Remove the rear extension in its entirety; and
 - ii. Cease the use of the air conditioning units on the Land; and
 - iii. Remove the two air conditioning units from the Land; and
 - iv. Remove all the associated infrastructure and material resulting from (i) and (iii) from the Land in its entirety.
 - The periods for compliance with the requirements are:
 - i. Within four weeks from the date this notice comes into effect.
 - ii. Immediately when this notice comes into effect.
 - iii. Within four weeks of the date this notice comes into effect.
 - iv. Within four weeks of the date this notice comes into effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act. 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 1990 Act.
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Decision

1. It is directed that the EN is varied by:

- *the deletion of the words "ii. Cease the use of the air conditioning units on the Land; and iii. Remove the two air conditioning units from the Land;" and their substitution with the words "ii. Cease the use of the two ground installed air conditioning units on the Land; and iii. Remove the two ground installed air conditioning units from the Land;" in 5. WHAT YOU ARE REQUIRED TO DO.*

Subject to the variation, the appeal is allowed, the EN is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the unauthorised erection of a rear extension on the north west elevation of the

property shown edged green on the Plan attached to the EN and the installation of two ground installed air conditioning units adjacent to the south western gable of the property shown blue on the Plan attached to the EN at 19 Dorchester Road, Kimberley, Nottinghamshire NG16 2TN as shown on the plan attached to the EN.

Matters Concerning the Notice

2. The allegation identifies part of the development as “...*the installation of two ground installed air conditioning units*...”. However, within the steps to be taken, the number of units is absent from criterion ii and both criteria ii and iii fail to state that the air conditioning units are ground installed. For precision, the wording of the allegation and the requirements should be consistent. The variations I shall make to achieve consistency are not so severe as to cause injustice.
3. Section 4 of the EN (“*the reasons for issuing the EN*”) does not identify the development’s harm, or the policies or proposals within the development plan that the alleged breach of planning control conflicts with. However, the appellant has appealed under ground (a) - that planning permission ought to be granted for the alleged breach of planning control. Furthermore, the appellant has correctly anticipated the Council’s concerns regarding the alleged breach. Therefore, I am satisfied that the appellant has not been prejudiced by the Council’s omission of these matters within Section 4 of the EN.

Preliminary Matters

4. Shortly before I was due to undertake an accompanied site visit, the appellant advised that I would be unable to access the appeal site. Consequently, I advised the parties I would undertake an unaccompanied site visit instead. I was able to see everything I needed to determine the appeal during my site visit.
5. There is a dispute between the parties whether the structure to the rear of the dwelling is a veranda or an extension. The structure is attached to the rear of the dwelling. Consequently, I am satisfied that the Council’s description of the alleged breach as a rear extension is acceptable for the purposes of this appeal. Furthermore, the appellant understood which structure the EN was directed towards from the description and therefore was not prejudiced.
6. Since the appeal was lodged, a revised National Planning Policy Framework (“the Framework”) has been published. However, this has not raised any new matters which are determinative to the outcome of this appeal. However, I have referenced the revised paragraph numbers where necessary.

The Appeal on Ground (a) and the Deemed Planning Application

7. An appeal under ground (a) is that planning permission should be granted for the matter alleged.
8. The **main issues** are:
 - a) the effect of the single storey extension and the two ground installed air conditioning units on the character and appearance of the surrounding area; and

- b) the effect of the two ground installed air conditioning units on the living conditions of the occupiers of neighbouring properties, with particular reference to noise.

Reasons

Character and Appearance

9. The appeal site consists of an end-of-terrace, two-storey dwelling in an elevated position. It is adjacent to a turning head and forms part of a housing development of similar dwellings. To one side of the appeal site is an area of land that is partially planted with vegetation and partially used for off-road parking by residents of the surrounding properties. A close boarded fence of 1.5m in height forms the boundary between the appeal property and the adjacent land.
10. The rear extension is constructed of a timber frame that is partially open-sided and has a mono-pitch roof that is tiled. The timber frame has been stained grey. It encompasses almost the full width of the dwelling's rear elevation and projects beyond the dwelling's side elevation, retaining a small gap between it and the adjacent boundary fence.
11. When viewed from the front of the dwelling, the rear extension is not highly visible due to its siting towards the rear of the dwelling, its limited height and its limited projection beyond the side elevation of the dwelling. The rear extension is visible when viewed from the adjacent land and road as it projects above the height of the boundary fence and is sited in an elevated position. However, the limited height of the rear extension and the recessive colour of both the roof tiles and stain ensure that it is not unduly prominent.
12. I acknowledge that the rear extension's timber frame differs from the dwelling's original materials. However, during my site visit I witnessed a garage with horizontal timber panelling at a neighbouring property that has a similar appearance to the rear extension, as well as timber fencing that demarcates the boundaries of neighbouring properties including the appeal site. Consequently, the rear extension's timber frame is not incongruous within the surrounding area.
13. The steps to remedy the breach of planning control, as detailed within the EN, require the appellant to either demolish the rear extension or reduce its width so that it does not project beyond the side elevation of the dwelling. If the appellant chose the latter, the rear extension (including the stained wooden frame) would remain visible within the surrounding area and have a similar effect on its character and appearance.
14. The two air conditioning units are positioned adjacent to the side elevation of the dwelling and are mounted on the ground. The existing close boarded boundary fence screens them from view and therefore, they do not harm the character and appearance of the surrounding area.
15. For these reasons, the rear extension and two ground mounted air conditioning units do not harm the character and appearance of the surrounding area. They comply with Policy 10 of the Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan, adopted 2014 ("ACS") and Policy 17 of the Broxtowe Borough Council Part 2 Local Plan 2018-2028, adopted 2019 ("LP") which, amongst other things, state that permission will be granted for development

which integrates into its surroundings and will be assessed against massing, scale, proportion and materials.

Living Conditions

16. The appellant has provided the model number and details of the air conditioning units, including their decibel range, which is between 43dB(A) and 62dB(A) depending on whether they are used to heat or cool the dwelling. The appellant asserts that the higher figure is comparable to a dishwasher being operated. This information has not been disputed by the Council and therefore, I have no reason to disagree with the appellant's evidence.
17. The two ground mounted air conditioning units are small and are positioned on the side of the dwelling furthest away from the attached dwelling (21 Dorchester Road). The dwellings on the opposite side of the road (24-28 Dorchester Road) are a substantial distance from the air conditioning units and there is an intervening close boarded fence. As such, the living conditions of the occupiers of the nearest residential properties are not unduly affected by the low noise levels that emanate from the air conditioning units.
18. For these reasons, the two air conditioning units do not harm the living conditions of the occupiers of neighbouring properties, with particular reference to noise. They comply with Policy 10 of the ACS and Policy 17 of the LP which, amongst other things, state that permission will be granted for development which ensures a satisfactory degree of amenity for occupiers of neighbouring properties and will be assessed against its impact on the amenity of nearby residents.

Conditions

19. I have had regard to the conditions suggested by the Council and the tests for conditions within paragraph 57 of the Framework. The suggested conditions relate only to the two ground mounted air conditioning units.
20. Suggested condition 1 is not specific to the air conditioning units as it refers to ventilation, air-conditioning, heating and refrigeration services. Furthermore, it relates to the installation of such equipment, however, the air conditioning units have already been installed. The condition requires the associated operating noise to not exceed NR 20 when measured or calculated within any noise-sensitive premises. The condition is unclear regarding where the measurement should be taken, at what time the measurement should be taken, and for how long. Furthermore, it requires the measurement to be taken from inside the "*noise-sensitive premises*" which are not within the appellant's control. Consequently, suggested condition 1 is unenforceable and imprecise.
21. In addition, I have found that the two ground mounted air conditioning units do not have a detrimental effect on the living conditions of the occupiers of neighbouring properties. Therefore, a condition limiting noise levels is unnecessary. Should noise emitting from the air conditioning units become a nuisance to the occupiers of neighbouring properties in the future, the Council has separate powers to investigate and prevent a statutory nuisance under the Environmental Protection Act 1990.
22. Suggested condition 2 is unnecessary as it is regarding the installation of the air conditioning units when they have already been installed. Suggested condition 3

requires the removal of the air conditioning units if they cease to operate for a continuous period. The reason given for the condition is “*in the interests of neighbour amenity*”. However, I am unclear how non-operational air conditioning units could affect the living conditions of the occupiers of neighbouring properties. Consequently, condition 3 is unreasonable.

23. Taking these matters together, the suggested conditions would fail the tests for conditions set out within the Framework. Therefore, I am unable to impose them.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the EN as varied. The EN will be varied and quashed.

A Berry

INSPECTOR