



Appeal Decision

Site visit made on 15 July 2025

by **G Roberts BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 July 2025

Appeal Ref: APP/Z1775/W/25/3365993

52 Guildford Road, Portsmouth, PO1 5HX

- 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 Sajahan M against the decision of Portsmouth City Council.
 - The application Ref is 24/01462/FUL.
 - The development proposed is installation of condensing units.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have adopted the description of development from the Application Form but deleted the word “*retrospective*” as this is not an act of development.
3. The Council’s Statement of Case (CSOC) states that they believe there has been substantive unreasonable behaviour on the part of the Appellant. The Council contend that this emanates from the refusal of the application due to the impact from noise and vibration on neighbours based on the objective noise assessment submitted by the Applicant. As a result, the Council contend that they have incurred unnecessary and wasted expense in defending this reason for refusal. The CSOC continues by confirming that notwithstanding this they did not consider it would be in the interests of any party to make a claim for costs. I have had regard to this statement in determining this appeal.
4. Turning to the Grounds of Appeal (GOA), I note that this appears to indicate that the Appellant is willing to relocate the proposed condenser units to ground level in accord with the recommendations of its submitted noise assessment. A revised plan showing this change (Drawing No.03) is appended to the GOA. Whilst it’s not that clear from the GOA, I have assumed that the Appellant is requesting that this revised plan be substituted for that refused by the Council and that the appeal be determined on this basis.
5. Paragraphs 16.1–16.2 of the ‘Procedural Guide: Planning Appeals – England’ (September 2024) state that it is important that what is considered by the Inspector is essentially the same as that considered by the Local Planning Authority, as well as interested parties, at the application stage. Also, that the appeal process should not be used to evolve a scheme. Paragraph 16.3 refers to the ‘tests’ that will be considered when amended plans or design changes are proposed, ‘tests’ which,

since the *Wheatcroft Principles*, have evolved through the judgement of *Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)*.

6. Neither the Council nor, more importantly, interested parties, have been consulted on this revised plan or had an opportunity to comment on whether it would affect or address their objections to the development or whether any further mitigation or information might be required. The revised plan shows a substantive change to the submitted application scheme and would, in my view, necessitate a new planning application.
7. Consultation is also an important part of the planning system and given that noise and vibration from the condenser units and their siting are central to this case, it would not be appropriate within the context of this appeal to consider this revised plan. To do so would cause unlawful procedural unfairness to interested parties.
8. It is also unclear to me from the CSOC as to whether they have in fact realised that this was the Appellants intention. They have not commented on this revised plan. More importantly, they have not had the opportunity to consult with and be advised by their Regulatory Services (Environmental Health Officer) on whether this revised plan would address all of their objections to the original application scheme.
9. It is essential that the appeal process is fair and open to all parties. In this respect, I find that my consideration of the appeal can only relate to the original scheme and plans considered by the Council at the application stage, and on which interested parties and other consultees views were originally sought. I have determined the appeal on that basis.

Main Issues

10. The main issues are the effect of the proposed development on: (a) the living conditions of neighbouring occupiers with particular regard to noise and vibration; and (b) the character and appearance of the surrounding area.

Reasons

Living conditions - neighbours

11. The appeal site comprises a two storey end of terrace property on the corner of Guildford Road with Alver Road. On the ground floor is a convenience shop with a store room and a separate flat roofed garage at the rear. The first floor is occupied as a flat. The surrounding area is predominantly residential and is characterised by similar two storey terraced properties a number of which have been altered through the provision of new windows, doors and other changes. The appeal relates to the installation of two new condenser units affixed to the rear wall of the host property some 3.65 metres above ground level. The units are already in place and planning permission is, therefore, sought retrospectively for their retention.
12. As I observed on my site visit, there is a third condenser unit located on the ground within the gap between the rear elevation of the host and its garage. I understand that this unit was previously sited on top of the side boundary wall to this gap. It is now located close to the common boundary wall with 50 Guildford Road (No.50). This unit is not shown on the proposed plans but is shown on the existing plans in its previous position on top of the wall. In view of this, the proposal before me does not include the acceptability of retaining this condenser unit, even in its relocated

position and it is not a matter that I have, therefore, considered further. I note that this was the approach that the Council took in concentrating its assessment on the two units affixed to the rear wall. Even so, at the time of my visit, this third unit was not housed within any acoustic enclosure and was noisy when activated.

13. The two units on the rear are positioned at a height that is broadly level with the centre of the windows on the first floor side elevation to the host (which is occupied as a flat). They are also broadly level with the centre of the first floor rear window to No.50, which also appears to be in residential use. They are also located close to the side elevation of 23 Alver Road, a two storey terraced house to the west of the host property, separated only by the distance of the gap and garage that I referred to earlier.
14. Both units were activated on my site visit and the noise levels they generated were high and noticeable. There was no apparent acoustic enclosure on either unit and there is no evidence before me to indicate whether it is still the Appellant's intention to install acoustic enclosures and, if so, what their specification would be, and whether they would be able to mitigate for the noise and vibration that the units currently generate.
15. The Council indicate that the condenser units have been the subject of several noise complaints to the EHO and that the latter were consulted in response to the appealed application and specifically in relation to the Noise Impact Assessment submitted by the Appellant, prepared by ES Acoustics (dated 23 August 2024 ref. 20892.PNIA-RPT.01) (NIA). The NIA found that the increase in noise levels from the proposed condenser units of some 13 - 21 dB was indicative of an adverse impact on the "*noise sensitive receiver*".
16. The NIA recommended, therefore, a mitigation strategy so as to sufficiently reduce the noise emissions to meet the relevant criteria. This strategy involved relocating the units to ground floor level in the gap between the garage and rear elevation to the host, and housing the units within acoustic enclosures. As I confirmed earlier, the two condensers remain on the rear wall at first floor level and at the time of my site visit they appeared not to be housed in any form of acoustic enclosure.
17. The retention of the two condensers in their current position is not supported by the NIA even if they were housed in acoustic enclosures, due to the level of noise and vibration that they generate. In view of this, I fully understand and endorse the EHO's advice and recommendation to refuse planning permission. The evidence clearly indicates that the condenser units, due to their position on the rear wall, result in an unacceptable level of noise and vibration that has a harmful effect on the living conditions of neighbouring properties.
18. Policy PCS23 of The Portsmouth Plan (Core Strategy) (TPP) requires new development to, amongst other requirements, protect amenity and provide a good standard of living environment for neighbours and local occupiers. That approach is consistent with paragraphs 135 f) and 187 e) of the National Planning Policy Framework (NPPF). The latter seek to prevent existing development from being adversely affected by noise pollution and to ensure a high standard of amenity for existing and future users. For the reasons given above, the appeal proposal fails to comply with these policy requirements.

19. The Appellant has referred to the need for the condensers to support the retail business. There is, however, no substantive evidence before me to support that statement or to suggest whether the Appellant has considered alternative options for the refrigeration and storage/display of convenience goods.
20. Accordingly, I find that the appeal proposal results in significant harm to the living conditions of neighbouring occupiers contrary to policy PCS23 of TPP and the corresponding policies of the NPPF.

Character and appearance

21. As I observed on site, the two condensers occupy a highly prominent position on the rear wall of the host property. Due to their height above ground level, their grey colouring and boxy appearance, they appear as discordant features that are out of character with the residential streetscene. Their visual impact is accentuated by the fact that the rear wall is constructed from red brick and the grey colouring of the units stands out against this background.
22. I also agree with the Council that the wiring to the units, along the side rendered elevation to the host, is also unattractive but could be mitigated by painting the wiring to match the colour of the render.
23. Accordingly, I find that the appeal proposal would result in harm to the character and appearance of the area contrary to policy PCS23 of TPP. This seeks to, amongst other matters, ensure that new development is well designed, respects local character and is appropriate in terms of its appearance, siting and materials.

Conclusions

24. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR