



Appeal Decisions

Site visit made on 16 July 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 August 2025

Appeal A Ref: APP/E5900/C/23/3330998

Appeal B Ref: APP/E5900/C/23/3330999

Appeal C Ref: APP/E5900/C/23/3331000

245 Mile End Road, London E1 4BJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act) by Mr Fang Li (Appeal A), Mr Muhammad Idrees Orakzai (Appeal B), and Mr Yuan Gao (Appeal C) against an enforcement notice issued by the Council of the London Borough of Tower Hamlets.
- The notice was issued on 5 September 2023.
- The breach of planning control as alleged in the notice is the installation of 2 condenser units on the west facing wall, at the entrance of Mile End Place.
- The requirement of the notice is to remove the two condenser units.
- The period for compliance with the requirement is three months from the date the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (d), and (g) of the Act; Appeals B and C are proceeding on the grounds set out in section 174(2)(d) and (g) of the 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 Act.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision. Appeals B and C are dismissed, but the enforcement notice is not upheld.

The Notice

1. It is incumbent on me to get the notice in order. The description of the alleged breach refers to two condenser units in the approximate position of a blue line on the plan attached to the notice. The steps required to be taken by the notice refer to the air conditioning units being located within an area outlined in blue on that plan. There is no area outlined in blue on the plan, and the position of the blue line is where a covered way is located. The condenser units have been installed adjacent to that covered way, not within it.
2. A photograph labelled 'Photo 2C' attached to the notice clearly shows the two condenser units. I shall therefore correct the notice, in the interests of providing clarity, by deleting references to the blue line and a non-existent area outlined in blue on the plan, along with references to other photographs which show other condenser units. This will not cause injustice to any parties as it remains clear from Photo 2C and the description of them being located on a west facing wall which condenser units are referred to by the notice.

Ground (d)

3. To succeed under this ground of appeal the appellants need to show, on the balance of probabilities that at the date when the notice was issued, no enforcement action could be taken in respect of the condenser units. Case law confirms that the appellants' evidence should be accepted if there is no evidence to

contradict their version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous.

4. Section 171B(1) of the Act, at the time the notice was issued, provided that no enforcement action could be taken in respect of the carrying out of any operational development after the end of the period of four years beginning with the date on which the operations were substantially completed. It is claimed that the condenser units were installed on 19 July 2019. If this is correct, they would have been exempt from planning control under the above provisions on the date the notice was issued. The Council claims that the condenser units were installed in November 2019, but no evidence has been provided to support this.
5. An invoice has been provided from County Cooling Services Limited, dated 19 July 2019. It refers to a deposit for 'new display chiller and frozen food cases', with the delivery address corresponding with the appeal site. However, no evidence has been provided to show that deposit was paid, or when any condenser units may have been delivered or installed.
6. The onus is on the appellants to provide the necessary level of information and evidence to support their case. The very limited evidence provided in support of the appellants' case under ground (d) lacks the necessary level of precision and clarity to show, on the balance of probabilities, that the condenser units were installed at least four years before the notice was issued. As such, it is unclear when the condenser units were installed.
7. The appeals under ground (d) must therefore fail.

Ground (a) and the deemed application for planning permission

8. The main issues are the effect of the development on: the character and appearance of the area, with particular regard to the Carlton Square Conservation Area (CA); and the living conditions of neighbouring residents, with particular regard to noise.

Character and Appearance

9. The condenser units have been fixed to a wall, facing into a narrow entrance to Mile End Place, at first floor level. A pair of condenser units face them from the opposite wall, which the Council has confirmed as lawful through the passage of time. I noted other condenser units of some age nearby: one to the rear of 241 Mile End Road, immediately around the corner and facing into Mile End Place; and one within a gated courtyard accessed off Mile End Place.
10. Mile End Place is a pleasant cul-de-sac of modest scale, which mainly comprises two-storey terraced houses with dual pitched roofs, appearing to date from the nineteenth century. This contrasts with the busy Mile End Road, which is far more commercial in character, with tall buildings of various ages in a mix of uses. Mile End Place forms part of the CA. So far as relevant to this appeal, the significance of the CA is largely derived from its mix of modestly proportioned Victorian residential buildings to the north of this part of Mile End Road.
11. The statutory duty at section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.

12. The appeal building is a plain modern development with brickwork and fenestration sympathetic to the historic buildings in Mile End Place, with black slatted doors below the condenser units. Black slatted vents are also present along the base of the building opposite. The condenser units are somewhat secluded from the main road as they are located on the opposite side of the narrow, covered way leading into Mile End Place.
13. Public views of the condenser units are contained within small areas at the southern end of Mile End Place due to the layouts of front garden boundaries. In all views from within Mile End Place, they are seen and experienced close to other condenser units, alongside the busy commercial backdrop of Mile End Road. The character and appearance of this part of Mile End Place and the CA is therefore informed to some extent by the existence of such plant and vents associated with the range of non-residential uses on Mile End Road.
14. In their current exposed state, the condenser units are an unwelcome and overtly industrial feature within the narrow residential entrance to Mile End Place. On this basis, they harm the pleasant residential and historic character of the cul-de-sac and the CA. However, in the context of other condenser units and vents, the level of harm they cause to the significance of the CA is very low and 'less than substantial'. The Council has not substantiated why the condenser units may harm the significance of the host building, the setting of Mile End Place, or what is claimed to be the historic archway. I find no harm in these regards.
15. Notwithstanding the very low level of harm caused to the significance of the CA, I assign great weight to that harm in accordance with the National Planning Policy Framework, which explains that planning permission should not be granted for such development unless it is outweighed by public benefits. I am not aware of any public benefits associated with the condenser units.
16. The condenser units therefore cause a very low level of harm to the character and appearance of the area and the significance of the CA, and fail to preserve or enhance the character or appearance of the CA. For these reasons they are contrary to Policies S.DH1 and S.DH3 of the Tower Hamlets Local Plan 2031 (2020) (THLP). These require, amongst other things, development to meet the highest standards of design which respects and positively responds to its context, and to preserve designated heritage assets. There is no conflict with Policy D4 of the London Plan (2021), which is a strategic design policy and is not directly applicable in this instance.

Living Conditions

17. The Council's submissions state that a Noise Report was submitted in support of a planning application for the condenser units, which was reviewed by the Council's Noise Officers and found to be acceptable. It was recommended by those officers that acoustic enclosures could be installed around the condenser units to reduce noise by at least 23 decibels (dB).
18. It has not been explained how the condenser units may cause unacceptable noise to be experienced by any nearby residents. However, it has also not been disputed that harm may be caused by the condenser units to the living conditions of nearby residents by the noise they emit.

19. There are residential windows close to the condenser units. On the limited evidence before me I consider it likely that the condenser units would be capable of causing unacceptable harm to the living conditions of nearby residents on account of the noise they emit, where that noise is not attenuated.
20. The condenser units therefore conflict with Policy D.DH8 of the THLP, which requires development to protect the amenity of existing buildings and their occupants, amongst other things.
21. The Council's submissions refer to Policy D.ES9 of the THLP, which requires noise emitted by heating and ventilation plant to be below background noise levels by at least 10dBA. As I have no information before me as to what background noise levels may be or the noise levels emitted by the condenser units, it has not been shown whether the development conflicts or accords with this policy.

Whether any harm could be mitigated

22. The Council's Noise Officer suggested that any harm caused to the living conditions of nearby residents by noise emitted from the condenser units could be addressed by acoustic enclosures. I see no reasons to disagree. Considering the positions of the condenser units and their surroundings, the very low level of harm which they cause to the character and appearance of the area and the significance of the CA could also be addressed through the use of an appropriately designed enclosure or enclosures. There are no details of such an enclosure before me, but on account of the presence of other condenser units and vents nearby, I am satisfied that an acceptable visual/acoustic enclosure could be designed. Such an enclosure would ensure the appearance of the CA is preserved, and would cause no harm to the significance of the CA. Therefore, although the condenser units in their exposed state are contrary to the development plan, the harm they cause could be mitigated through the use of a planning condition.
23. The Council has not provided a list of suggested conditions for me to refer to if planning permission is to be granted for the development. However, I consider that the development would be capable of according with the development plan, subject to a condition requiring the approval of details of an enclosure or enclosures and the installation and retention of such enclosure(s). I shall therefore grant planning permission for the development subject to a condition requiring those details to be submitted to the Council for approval within three months of the date of this decision.
24. As the development has already been carried out, for the condition to be enforceable, it shall require the removal of the condenser units within an additional three months if such details are not submitted within that period, or if such details are submitted and refused and either no appeal is lodged against that refusal or such an appeal is dismissed. The condition will also require the approval of a timescale for the installation of any approved visual/acoustic enclosure(s) and their retention, and it shall specify that the enclosure(s) will be designed, installed, and maintained to control noise emissions in accordance with Policy D.ES9 of the THLP. This will mitigate the harm otherwise caused by the condenser units and make the development acceptable in planning terms.

Conclusion on Ground (a) and the deemed application or planning permission

25. The condenser units harm the character and appearance of the area and the significance of the CA, and fail to preserve or enhance the character or appearance of the CA. In addition, they are likely to harm the living conditions of nearby residents by way of noise. That harm can be appropriately mitigated through the installation of enclosure(s), which can be required by condition. Therefore, subject to the condition attached to this decision, the condenser units preserve the appearance of the CA and accord with the development plan as a whole. There are no material considerations which indicate consent should be refused on the deemed applications for planning permission.
26. The appeal under ground (a) succeeds and the deemed application for planning permission should be granted.

Overall Conclusion

27. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the two condenser units as described in the notice as corrected. The notice will be quashed, and it follows that the appeals on ground (g) do not fall to be considered. As such, Appeals B and C will be dismissed, but the notice will not be upheld on account of the success under ground (a) in Appeal A.

Formal Decisions

Appeal A

28. It is directed that the enforcement notice is corrected by:

- The deletion of the text 'approximate location outlined in blue on the attached site plan in Appendix 1' at paragraph 3 of the enforcement notice and the substitution of the text 'attached photograph labelled 'Photo 2C''; and
- The deletion of the text 'shown outlined in blue on the attached plan and' at paragraph 5 of the enforcement notice.

29. Subject to the corrections, 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 Act for the development already carried out, namely the installation of two condenser units on the west facing wall at the entrance of Mile End Place at 245 Mile End Road as shown on the plan attached to the notice and subject to the following condition:

The two condenser units hereby permitted shall be removed and all equipment and materials resulting from their removal shall be removed within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within three months of the date of this decision details of a visual and acoustic enclosure or enclosures shall have been submitted for the written approval of the local planning authority and the details shall include a timetable for its/their installation. The details shall show that the level of noise emitted by the condenser units from the enclosure(s) will be maintained below the background noise level by at least 10dBA.

- ii) If within eight months of the date of this decision the local planning authority refuse to approve the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The enclosure(s) specified in the approved details shall have been installed and completed in accordance with the approved details and timetable.
- v) Upon installation of the enclosure(s) specified in the approved details required by this condition, that/those enclosure(s) shall thereafter be maintained and retained as specified in those details.
- vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeals B and C

30. The appeals are dismissed and the enforcement notice is not upheld.

L Douglas

INSPECTOR