



Appeal Decision

Site visit made on 3 July 2025

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2025

Appeal Ref: APP/X5210/W/25/3363132

31 Elsworthy Road, London NW3 3BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Valouran against the decision of the Council of the London Borough of Camden.
- The application reference 2024/3908/P was approved on 5 February 2025 and planning permission was granted subject to conditions.
- The development permitted is the erection of single storey rear extension; formation of basement with pool, a front lightwell, a side lightwell and basement rooflights in ground at rear; infilling of windows and formation of a door in side elevation; a rear planter; the replacement of front garage door with windows and the installation of five roof lights at roof level.
- The condition in dispute is No 6 which states that:
Prior to the occupation of the development hereby approved, full details of Air Source Heat Pumps (ASHPs) and any mechanical ventilation shall be submitted to and approved by the local planning authority. The details shall demonstrate the ASHP system and any ventilation either has no active cooling function, or cooling deactivated by the manufacturer, or that it is an air to water heat pump system only supplying underfloor heating and/or oversized radiators. The measures shall be fully provided in accordance with the approved details and thereafter retained and maintained in accordance with the approved scheme, and no other system of active cooling shall be implemented.
- The reason given for the condition is:
In order to minimise energy consumption and following the energy and cooling hierarchies, in accordance with policies CC1, CC2, D1 of the Camden Local Plan 2017.

Decision

1. The appeal is allowed and the planning permission reference 2024/3908/P for the erection of single storey rear extension; formation of basement with pool, a front lightwell, a side lightwell and basement rooflights in ground at rear; infilling of windows and formation of a door in side elevation; a rear planter; the replacement of front garage door with windows and the installation of five roof lights at roof level at 31 Elsworthy Road, London NW3 3BT granted on 5 February 2025 by the Council of the London Borough of Camden, is varied by deleting conditions 2 and 6, and substituting for them the following conditions:
 - 2) The development hereby permitted shall be carried out in accordance with the following approved documents and drawings:
 - Existing drawings: 23045 00: 001 P1, 002 P1, 003 P1, 004 P1, 006 P1, 009 P1, 009 P1, 100 P1, 101 P1, 102 P1, 200 P1, 201 P1
 - Proposed drawings: 23045 01: **000 Revision P2**, 001 P2, 002 P1, 003 P1, 004 P1, 006 P1, 100 P2, 101 P1, 102 P2, 200 P2, 201 P1, 202 P2
 - Heritage Statement (Jon Lowe Heritage - September 2024), Design & Access Statement (Moreno Masey - August 2024), Arboricultural Impact Assessment (Landmark Trees - May 2022), Arboricultural Method Statement (Landmark Trees - March 2024), **Thermal Modelling &**

Overheating Analysis (E & S Bristol – March 2025 rev C), (Plant Noise Impact Assessment - EMTEC - August 2024), Schedule of Areas (Moreno Masey - 23045)

- Addendum to BIA - technical Note (Soil Consultants), Engineering Drawings - 8255-MBP-SK240809 BIA of Consented application, 8255-MBP-SK240809 Excavation of proposed scheme in current application, 8255-MBP-SK240809 Changes from consented application.
- 6) Prior to its installation, full details of the specification of Air Source Heat Pumps (ASHPs) and mechanical ventilation systems, and associated controls, shall be submitted to and approved by the local planning authority. The system or systems shall be installed on site in accordance with these approved details and the Thermal Modelling and Overheating Assessment (prepared by E & S Bristol and dated March 2025), and retained as such thereafter. Active cooling shall be provided only to those rooms identified as requiring it within the assessment; namely the study/homework room (as shown on Drawing (01)000 rev P2 Proposed basement floor plan), Bedroom 02 (Drawing (01)002 rev P1 Proposed first floor plan), and Bedroom 05 (Drawing (01)003 rev P1 Proposed second floor plan).

Applications for costs

2. An application for costs was made by Valouran against the Council of the London Borough of Camden. This is the subject of a separate Decision.

Background and Main Issue

3. Planning permission has been granted for alterations to the appeal property, including the erection of a rear extension, and the creation of a basement level. Condition 6 of that permission seeks to ensure that an air-source heat pump (“ASHP”) proposed as part of the development is not used to provide active cooling. The appellant considers that active cooling is required for certain rooms within the property, and therefore seeks to have that condition removed or amended.
4. The main issue is therefore whether the disputed condition is necessary and reasonable, having regard to development plan policies which seek to mitigate and adapt to climate change.

Reasons

5. The planning permission allows for the creation of a basement level with a living/games room, a playroom, a utility room, a gym (now instead proposed to be used as a study/homework room), and a swimming pool with changing room and sauna, as well as various storage and plant rooms.
6. Policy D1 of the 2017 Camden Local Plan (“the CLP”) requires development to be sustainable in design and construction, and to incorporate best practice in resource management and climate change mitigation and adaptation. Policy CC1 requires all development to minimise the effects of climate change, while Policy CC2 requires development to be resilient to climate change, including by adopting measures to reduce the impact of urban and dwelling overheating. This includes application of the “cooling hierarchy”, summarised in the supporting text to CC2.

Further guidance in respect of the cooling hierarchy is set out in the Council's 2021 *Energy Efficiency and Adaptation* Supplementary Planning Document ("the SPD").

7. The planning application was accompanied by a thermal modelling and overheating analysis ("TMO analysis")¹ which indicated that, without mechanical ventilation and cooling, the basement gym and swimming pool would not comply with the thermal comfort metric set out in the 2013 CIBSE² technical memorandum *TM52: The limits of thermal comfort: avoiding overheating* ("TM52"); the living/games room would comply with TM52 using mechanical ventilation with heat recovery. The rooms on the ground, first and second floors were assessed against, and found to comply with, the metric set out in the 2017 CIBSE *TM59: Design methodology for the assessment of overheating risk in homes* ("TM59").
8. The Council imposed the disputed Condition 6 on the basis that the gym and pool would be non-habitable rooms, and therefore compliance with the TM52 metric would not be essential. An "informative" paragraph appended to the decision notice explained that:

"An Overheating Assessment has been undertaken, in line with the Camden Planning Guidance on Energy Efficiency & Adaptation for the ventilation which is proposed in the basement. The Overheating Assessment indicates that mechanical ventilation is required for the gym and swimming pool in the basement. The Council's Sustainability Team is of the view that the cooling of these rooms is not essential and that mechanical ventilation of the rooms is contrary to the policy and guidance for energy efficiency and climate change mitigation. A condition to prevent the use of the mechanical plant for ventilation is therefore attached accordingly."

9. Although the original TMO analysis found that swimming pool room would not comply with TM52, it is not mentioned as one of the spaces where mechanical cooling would be provided. The summary and conclusions³ state that there would be "cooling to the basement living room, gym and basement hallway". The Council's stance in respect of the swimming pool room therefore seems to me to be based on a misunderstanding of the application information. Furthermore, neither the development plan nor the SPD differentiate between "essential" and "non-essential" rooms so far as the cooling hierarchy is concerned.
10. However, it does not seem to me fundamentally unnecessary or unreasonable to impose a condition limiting or preventing the use of mechanical ventilation or cooling, given the development plan's requirements in respect of climate change mitigation and adaptation (including applying the cooling hierarchy). Notwithstanding the Council's apparent misunderstanding in respect of the swimming pool area, the development as originally proposed included the use of mechanical cooling in the basement games/living room, though this was not found necessary by the original TMO.
11. Without some form of condition, the development as originally proposed would not have complied with the relevant provisions of the development plan. That does not appear to have been the case for another planning permission granted at No 2 Elsworthy Road⁴, where it was stated (again in an "informative" note) that the use

¹ E & S Bristol *Thermal Model & Overheating Analysis* September 2024 rev A

² The Chartered Institution of Building Services Engineers

³ Set out on p17 of the original TMO analysis

⁴ LPA Ref: 2023/5350/P

of active cooling would be limited to those rooms identified as being overheated in the submitted overheating report.

12. The appellant submitted an updated TMO analysis⁵ during the appeal, so the proposed use of mechanical cooling is not now the same as that originally considered by the Council. The updated TMO analysis was submitted in response to detailed design changes made since the grant of planning permission. The appellant summarises those changes, insofar as relevant to this appeal, as being largely related to the retention of several of the existing building's windows which the original TMO analysis had assumed would be replaced. The updated TMO analysis again assessed the habitable rooms (now including the basement study/homework room originally identified as a gym) against the TM59 metric. It found that, without mechanical cooling, three rooms would not comply: the basement study/homework room, Bedroom 02 on the first floor, and Bedroom 05 on the second floor.
13. While I note the Council's comments in respect of the exploration of other means of cooling, including natural passive measures, I consider that the updated TMO analysis provides an adequate demonstration that the cooling hierarchy has been applied in this case. Following my comments above, it remains necessary and reasonable to impose a condition limiting the use of mechanical cooling to those rooms and spaces where it has been demonstrated to be required.
14. I have considered the alternative wordings for an amended Condition 6 put forward by both main parties, having regard to the tests in the National Planning Policy Framework and advice in the Planning Practice Guidance. The form preferred by the Council would have required the submission of further details of mitigation which, in view of my comments in the preceding paragraph, would not be necessary or reasonable. I have therefore based an amended Condition 6 on the wording proposed by the appellant. In order to comply with the advice in paragraph 10.9 of the SPD I have included a requirement to submit for the Council's approval the detailed specification of the system and its controls. In the interests of precision and enforceability I have also specified the rooms and spaces to which active cooling can be provided.

Other Matters

15. I have described above the changes made between the original planning application submission and this appeal. While I note the Council's comment that "planning appeals should be undertaken on the basis of the application documents", it is open to me here to deal with the application as if it had been made to me in the first instance⁶; I have reached my decision based on the information put before me, which was also available to the Council to address during the appeal.
16. The Council's statement referred to its emerging local plan which will, in due course, replace the existing CLP. Draft Policy CC8 of that plan indicates that developments "that include active cooling (air conditioning) and non-essential mechanical plant" will be resisted, and it may therefore "set a higher bar" so far as such installations are concerned. However, while I note that the emerging plan is at, or approaching, the stage of being submitted for examination, and the Council

⁵ E & S Bristol *Thermal Model & Overheating Analysis* March 2025 rev C

⁶ Section 79 of the Town and Country Planning Act 1990

anticipates it being adopted in 2026, there is nothing before me to indicate the extent to which there may be unresolved objections either to the plan as a whole, or to Draft Policy CC8 in particular. As such, the policies of the emerging local plan carry limited weight in my determination of this appeal, and do not justify my reaching a different conclusion.

17. The appeal site is within the Elsworthy Conservation Area, and I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In granting the original planning the Council was satisfied that the “proposed development would preserve the character and appearance of the host building, neighbouring ones and wider conservation area”. Nothing which has been put before me leads me to a different view on this important point.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting for it an amended Condition 6 as stated in my decision. It has also been necessary for me to amend Condition 2 so that it refers to the amended basement plan and the updated TMO analysis submitted during the appeal.

M Cryan

Inspector