



Appeal Decision

Site visit made on 18 June 2025

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12th December 2025

Appeal Ref: APP/N5090/C/23/3322960

77 Wentworth Road, London, NW11 0RH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the “Act”).
 - The appeal is made by Mr Joseph Selwyn Ollech against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 19 April 2023.
 - The breach of planning control as alleged in the notice is “without planning permission, the installation of 3no. air conditioning units on the side elevation of the property”.
 - The requirements of the notice are to: permanently remove the air conditioning units from the property.
 - The period for compliance with the requirement is: two months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Act.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant does not dispute that the air conditioning units cited within the allegation of the enforcement notice have been installed, rather the point made by the appellant is that they do not constitute development, which is an argument under ground (c), that there has not been a breach of planning control. This appears to be a hidden ground (c) appeal. I therefore sought the appellant’s views on this matter and they confirmed their wish to add a ground (c) appeal in addition to the other grounds of appeal which had already been claimed. The Council were given the opportunity to provide their comments on this matter.
3. The notice alleges the erection of air conditioning units on the side elevation but in its reasons for issuing the notice, the Council refers to air conditioning units on the rear elevation of the property. The appeal property appears to have been extended at the rear with a two-storey extension. The first floor part extends to fill the width of the dwelling whereas the upper part is set in from the edges of the ground floor extension. The air conditioning units have been installed upon the side elevation of the upper part of the rear extension. It is clear from the evidence and from my inspection of the site that the air conditioning units have been erected on the side elevation and I shall consider the appeal on that basis.

Matters concerning the notice

4. The appellant raises issue with the validity of the notice in that the notice fails to state the alleged breach accurately given the appellant’s assertion that one of the air conditioning units, namely “Unit 1” was installed well before the 20 April 2019

and as such, this part of the breach of planning control has not occurred within the last four years. However, such an argument is relevant to an appeal under ground (d), which the appellant has pleaded and for which I will consider below, and is not an issue which would render a notice invalid if I were minded to accept the appellant's evidence demonstrated that, for part of the allegation, installation occurred more than four years before the notice was issued and was therefore immune from enforcement action.

Ground (b)

5. An appeal made under ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. In a legal ground of appeal, the burden of proof is firmly on the appellant to make out their case to the balance of probabilities.
6. The appellant does not dispute that the three air conditioning units alleged in the enforcement notice had been installed by the date of the notice being issued. As such, matters comprising the alleged breach of planning control have occurred as a matter of fact, and I therefore conclude that the appeal under ground (b) fails.

Ground (c)

7. An appeal under ground (c) is made on the basis that the matters alleged in the enforcement notice do not constitute a breach of planning control. This is a legal ground of appeal which is strictly concerned with matters of fact and law distinct from any planning merits. The onus of proof lies with the appellant to demonstrate why their appeal should succeed on ground (c), the relevant test of the evidence being on the balance of probability.
8. The question to be asked is whether development has taken place for which planning permission is required and if so, whether planning permission is granted or the development is otherwise deemed to be lawful.
9. The meaning of development is set out in section 55(1) of the Act and includes the '*carrying out of building, engineering, mining or other operations in, on, over or under land*'. Section 55(1A) stipulates that '*building operations*' includes, demolition of buildings; rebuilding; structural alterations of or additions to buildings; and other operations normally undertaken by a person carrying on business as a builder.
10. Section 55(2) makes exemptions to the definition, providing that particular operations or uses of land shall not be taken to involve development of the land and therefore do not require any grant of planning permission. One such exception at section 55(2)(a) states that the following operations or uses of land shall not involve development of the land namely, the carrying out for the maintenance, improvement or other alteration of any building of works which, (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, is not development. The issue in dispute is whether the air conditioning units materially affect the external appearance of the building as a matter of fact and degree. The appellant argues that the air conditioning units make no material difference to the look of the building and thus do not constitute 'development' for which planning permission would be required.

11. In making the ‘materially affect’ assessment, the Court held in *Burroughs Day*¹ it is not just the exterior of the building that is to be considered, but the effect on the external appearance of the building as a whole, in this case, 77 Wentworth Road, and not by reference to a part of the building taken in isolation. This must be judged with regard to the degree of visibility of the alteration by observers at different points outside of the building. Vantage points need not solely be those related to views from the public realm, but they should not be unusual. Alterations that are capable of being seen from any vantage point on the ground or, in, or on, any neighbouring building(s) are capable of affecting the external appearance. External appearance must be materially affected and the effect must be more than *de minimis*. Materiality must also take into account the nature of the building being altered and the nature of the alteration.
12. The units have been installed on the side elevation of the first floor rear extension which is set in from the side elevation of the first floor extension it sits above and that of the side elevation to the original dwelling. As a consequence, the units cannot be seen from Wentworth Road nor from private views from the side passage positioned between the appeal dwelling and neighbouring property, 75 Wentworth Road (“No 75”). Notwithstanding the slightly sloping nature of the rear garden of the appeal property and noting that the units are positioned on a first floor flank wall which is set in from the edge of the ground floor flank elevation and behind a parapet wall of short height, the upper left unit (hereinafter referred to as “unit 1”) is visible in views from ground level within the garden of the appeal dwelling together with very limited views of the lower left unit and right unit (hereinafter referred to as “unit 2” and “unit 3”, respectively).
13. By reason of the close proximity of No 75, and the position of first floor level windows within the rear elevation of this neighbouring dwelling, I consider it is likely that the units are capable of being viewed from these windows, albeit such views are angled. Notwithstanding the presence of some intervening vegetation, due to their elevated position at first floor level and having been installed upon the flank elevation facing towards No 75, I consider it is likely that there are views of the units from within the garden of No 75 and a number of other neighbouring dwellings positioned to the side of No 75, even if these views are at an angle. Whilst vegetation is likely to partially obscure views of the units, the screening effect of foliage will inevitably be reduced during winter months such that the units will become more readily visible from neighbouring gardens.
14. A block of flats containing several floors of accommodation together with garden and amenity land is located to the rear of the appeal site. Albeit the flats are located some distance away and they are not positioned directly behind the property, views towards the appeal property and the air conditioning units, from windows within the flatted development and from within its garden and amenity areas are more likely than not to be possible, both through and over vegetation, particularly during the winter months for the reason explained above.
15. Although the rear of the building cannot be seen as a whole from close up or more distant viewpoints, the air conditioning units are prominent additions to the property given their elevated position. They are sizeable structures with volume that adds bulk to the first-floor level of the property. Together with a modern design, metal construction and utilitarian appearance the air conditioning units are

¹ *Burroughs Day v Bristol City Council* [1996] 1 EGLR 167

a contrast with the more traditional design, features and materials of the appeal dwelling. In my view, the air conditioning units cannot be regarded as being *de minimis*.

16. The appellant has provided a copy of the Council's delegated report and has drawn my attention to the officer's comments within it that state '*In terms of their physical form, the units are not considered to harm the amenity of either neighbouring occupier due to their scaling and location*'. The appellant interprets this as a recognition that the units do not materially affect the external appearance because they do not cause harm, however, something can materially affect a building without causing any harm.
17. The appellant points to air conditioning units being typically associated with a residential use of a property and points to similar air conditioning units being in situ at a number of other properties nearby including at the neighbouring property (75 Wentworth Road). However, it is not known whether planning permission has been granted for these units and in any event, the presence of similar development is not relevant for the purposes of assessing whether the air conditioning units materially affect the external appearance of the building.
18. I conclude that, as a matter of fact and degree, the air conditioning units materially affect the external appearance of the building as a whole and are not excluded from the definition of development by way of section 55(2)(a)(ii) of the Act. The matters constitute development of the land and by reason of section 57(1) of the Act, planning permission is required for the carrying out of any development of land.
19. The Town and Country (General Permitted Development) (England) Order 2015 (as amended) (the "GPDO") grants planning permission for certain types of development, described as "permitted development". Schedule 2, Part 1 of the GPDO permits various development within the curtilage of a dwellinghouse, such as extensions, roof alterations, porches, chimneys, flues and microwave antenna. However, the appellant has not advanced their case on the basis that the air conditioning units would be permitted by the GPDO and, given the limitations and conditions set out in Part 1, I consider it unlikely the air conditioning units would have been permitted by the GPDO.
20. Accordingly, I find that, on the balance of probabilities, the air conditioning units cited within the allegation of the notice are not development permitted by the GPDO. The appellant has failed to demonstrate that, at the time the notice was issued, the installation of 3no. air conditioning units on the side elevation of the property does not constitute a breach of planning control.
21. The appeal on ground (c) fails.

Ground (d)

22. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In a legal ground of appeal, the burden of proof is firmly on the appellant to make out their case, on the balance of probabilities.

23. Section 171B(1)² of the Act provides where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years, beginning with the date on which the operations were substantially completed. The appellant asserts that *'one of the units was installed more than four years, before the notice and was therefore immune from enforcement. The requirement to move three units is therefore flawed'*. To be successful, the appellant would need to demonstrate that the air conditioning units, were installed on or before the 23 April 2019 (the "Relevant Date").
24. The appellant has submitted an email dated 17 July 2018 from a company it says installed an air-conditioning unit at the property. The subject line of the email refers to *'77 Wentworth Road – Air Conditioning'* and whilst an attachment titled *'2018-05-25 Power Supply and Drain Points'* is referred to, the attachment has not been provided to me as part of this appeal. It states *'engineers installed the Master Bedroom unit today (my emphasis) and noticed the plumber has not prepared drain points for any of the AC units. List attached again here'*. Whilst the submitted evidence provides support to an air conditioning unit serving the master bedroom having been installed at the property on the 17 July 2018, which is prior to the Relevant Date, the email is ambiguous as it refers to 'units' which implies more than one being present at the property and moreover, the evidence does not clearly identify the position of the unit installed, nor whether the unit they installed was one of those present at the date of the notice, and if so, which unit, out of the three units installed at the time of the notice, is the unit that it installed. The appellant's written evidence is vague and also fails to adequately address this point.
25. Whilst the Council have provided no evidence to contradict the appellant's account, I find the appellant's evidence in this regard to be imprecise and ambiguous. The appellant has failed to show, on the balance of probability, that a breach occurred, for all or part of the matters stated within the notice, at least four years prior to the issue of the notice. The appeal under ground (d) fails.

Ground (f)

26. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. An enforcement notice can have the purpose of remedying the breach of planning control. This can include by making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, or restoring the land to its condition before the breach took place. Alternatively, an enforcement notice can have the purpose of remedying any injury to amenity which has been caused by the breach.
28. The notice requires the permanent removal of the air conditioning units from the property. This suggests the purpose of the notice is to remedy the breach of planning control. Leaving any part of it in place would not achieve that purpose.

² 4 years is the relevant time period because the enforcement notice was issued prior to 25 April 2024.

29. For an appeal on ground (f) to succeed the appellant must show that the requirements of the notice are excessive to remedy the breach and that 'lesser steps' would achieve the same end. The appellant suggests retaining the air conditioning units and installing acoustic mitigation measures to overcome any unacceptable impacts arising from noise and disturbance which may be experienced by neighbouring occupiers.
30. However, the appellant has not appealed under ground (a). There is no scope within a ground (f) appeal to consider what is effectively the planning merits of the appeal. The purpose of the notice is to remedy the breach and so any lesser step that would not remedy the breach cannot be accepted through ground (f).
31. The notice requires the removal of the air conditioning units from the property. I consider there is no obvious alternative or lesser step which would achieve the purposes of the notice with less cost and disruption.
32. The appeal on ground (f) fails.

Other Matters

33. The appellant has drawn my attention to the way in which the Council have conducted themselves and has provided a copy of correspondence. However, issues regarding the conduct of the Council is not a matter that is determinative to the issues I have considered as part of this appeal.

Conclusion

34. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

E Brownless

INSPECTOR