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## 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: 12<sup>th</sup> December 2025**

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**Appeal Ref: APP/N5090/C/23/3323313**

**5 Shirehall Lane, London, NW4 2PE**

- 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 Benjamin Daniel Spitzer against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The notice was issued on 25 April 2023.
  - The breach of planning control as alleged in the notice is “without planning permission, the installation of air-conditioning on the north and west elevations of the property, as shown edged in red on the attached Drawing 01”.
  - The requirements of the notice are to: Remove the air-conditioning units from the north and west elevations of the property.
  - The period for compliance with the requirement is: three months from the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
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### Summary Decision

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

### Preliminary Matters

2. Since the appeals were registered, the Barnet Local Plan 2021-2036 was adopted by the Council in March 2025 (LP). The policies contained within it supersede those referenced in the enforcement notice and I have had regard to these new policies and the views of the parties in reaching my decision.

### The notice

3. The notice alleges ‘without planning permission, the installation of air-conditioning on the north and west elevations of the property, as shown edged in red on attached drawing 01’. The Council’s concern is clearly the installation of air-conditioning units. Since the appellant has understood the allegation to be concerned with the air-conditioning units and in the interests of clarity, I shall correct the notice to refer to ‘air-conditioning units’.
4. The land to which the notice relates is identified as ‘shown edged and hatched black on the attached plan’. The plan does not have any hatching, the property is edged black and shaded grey. In the interests of clarity, I shall correct the notice to refer to ‘shown edged in black and shaded grey’.

5. It is the duty of the Inspector to put the enforcement notice in order irrespective of the grounds of appeal. The enforcement notice attacks air-conditioning units '*on the north and west elevations of the property, as shown edged in red on attached Drawing 01*'. However, within the Council's written evidence it concedes that the reference to the 'west elevation' is erroneous, and it has requested the notice be corrected to refer to the correct elevation, namely the 'east' elevation. The appellant has also drawn my attention to the Council's error.
6. Drawing 01 indicates the positions of the air-conditioning units. Based upon the above, the reference to the '*existing west elevation*' on Drawing 01 is also incorrect. I therefore wrote to the Council requesting a revised drawing. In its response the Council stated "*on reflection, the elevation previously described as the 'Existing North Elevation' on Drawing 01 would be more accurately described as the 'Existing South-East Elevation', and the previous 'Existing West Elevation' should be 'Existing North-East Elevation'*". The appellant was given the opportunity to comment on this matter.
7. Since the appellant has advanced their case, including under ground (a), on the basis of the unauthorised air-conditioning units being those positioned on the rear elevation and the flank elevation adjacent to the neighbouring dwelling rather than the highway (Shirehall Close), amending the allegation to reflect the correct elevations and a corresponding amendment to the requirement would therefore not cause injustice since the appellant has clearly understood what is alleged and what steps must be taken to remedy the breach of planning control. I shall therefore correct the allegation to 'without planning permission, the installation of air-conditioning units on the south-east elevation and north-east elevation of the property, as shown edged in red on attached Drawing 01A'. I shall delete Drawing 01 and replace it with Drawing 01A.
8. I shall correct the requirement to read 'remove the air-conditioning units from the south-east and north-east elevations of the property'.

### **Ground (a)**

9. An appeal under ground (a) is that planning permission ought to be granted for what is alleged in the enforcement notice. The main issue is the effect of the development on the character and appearance of the appeal property and the surrounding area.

#### ***Character and appearance - South-East Elevation***

10. The appeal property is located within a predominantly residential area that is characterised by 2-storey detached and semi-detached dwellings. Typically, dwellings are constructed from a mix of red/brown tile roofs and walls comprised of a mix of brick with light coloured render. The elevations of dwellings are largely uncluttered save for some satellite dishes and intruder alarm bell boxes. Together these features combine to give the street a strong sense of rhythm, uniformity and cohesion which makes a positive contribution to the character and appearance of the surrounding area. Whilst a very limited number of properties along Shirehall Lane have an air-conditioning unit, generally these comprise a single unit and thus air-conditioning units are not a feature which are typically found within the surrounding area.

11. The appeal property is a two-storey detached dwelling that is situated partway along Shirehall Lane at its junction with Shirehall Close and thus occupies a prominent corner position. The development consists of 8 air-conditioning units located at first floor level, including 3 units installed on the south-east elevation of the property above a single storey rear extension and a further 5 units installed on the flank wall of the north-east elevation adjacent to the neighbouring property, 3 Shirehall Lane (No.3)
12. The air-conditioning units installed on the south-east elevation (the “rear units”) are in part obscured by the roof structure of the existing single storey rear extension, however a significant extent of the upper part of the rear units remain visible from street level. Whilst the rear units differ in size to each other, they are nonetheless sizeable structures that occupy a prominent position at first floor height and thus are readily visible from Shirehall Close. Despite comprising a light-coloured exterior that appears similar to the colour of the existing rendered wall upon which they have been installed, they nonetheless have a utilitarian appearance that visually detract from the host building and are at odds with other dwellings within the area which have elevations that are largely uncluttered save for the occasional and modestly sized intruder alarm bell box and satellite dish.
13. The appellant has provided a number of photographs taken looking towards the rear of the property from the public domain. However, rather than supporting the appellant’s case, they serve to highlight the visibility of the rear units. Vegetation present within the rear garden of the appeal property is irregularly placed and sparse and there are substantial gaps within the boundary vegetation that provide for clear views of the rear units from public vantage points within Shirehall Close.
14. Due to the size, siting and design, the rear air-conditioning units appear as incongruous and discordant additions to the rear elevation which serve to create visual clutter at first floor level. Consequently, the development on the rear elevation is not in keeping with the character and appearance of the surrounding area.
15. Whilst the appellant points to multiple air-conditioning units being a common feature of the area, no particular examples have been drawn to my attention and in any event, this does not accord with my own observations of the surrounding area at the site visit. A number of interested parties have commented in support of the appeal scheme and suggest that the air-conditioning units fit in with the local area. However, for reasons explained above, I do not agree with that view. Whilst I note the air-conditioning units enable the appellant and their young children to remain cool, this benefit of the scheme does not outweigh the harm that would be caused to the character and appearance of the appeal dwelling and the surrounding area. Furthermore, I consider there are likely to be other ways to keep the family cool, which are less harmful to the character and appearance of the area.
16. For the reasons given above, I conclude that the rear units fail to relate appropriately to the context of the site nor respect the character and appearance of the appeal property and surrounding area. Thus, the development comprising the rear units conflicts with LP Policy CDH01 insofar as it requires high quality development that responds sensitively to the distinctive local character and design. The scheme would also fail to accord with the guidance contained within Barnet’s Residential Design Guidance Supplementary Planning Document (2016)(RDG SPD) which recognises that external services on the outside of a building can

often detract from the '*finished appearance of an otherwise well designed development*' and sets out that flues, ventilation units and other services that appear as 'add-on' elements will not normally be accepted.

17. The Council has indicated that the development is contrary to LP Policies HOU03, CDH04 and GSS01. However, LP Policy CDH04 is concerned with development comprising tall buildings (of 8 storeys and above or 26 metres and above ground level), LP Policy HOU03 sets out the criteria for residential conversions and re-development of Larger Homes and LP Policy GSS01 relates to delivering sustainable growth. To my mind, these policies are not determinative to the appeal scheme.

#### *Character and appearance – North-East Elevation*

18. The air-conditioning units installed on the flank elevation (the "flank units") are much less visible from public vantage points within Shirehall Lane by reason of their position on the flank elevation of the appeal property. Given the close proximity of the neighbouring property, No.3 to the side of the appeal dwelling, views of the flank units from Shirehall Lane are substantially limited to partial glimpsed views from within a short section of the highway. Moreover, by reason of the arrangement of the units, views of the flank units are largely limited to the two units positioned closest to the highway and as such that the totality of units installed on the side of the house cannot be easily read.
19. Whilst the Council concedes in their evidence that '*the flank units are not highly visible from the streetscene along Shirehall Lane*', the Council has set out the development is considered excessive in amount given the '*sheer volume of units, totalling eight*'. The RDG SPD sets out that flues, ventilation units and other services that appear as 'add-on' elements will not normally be accepted and the Council has pointed to the cumulative extent of the air-conditioning units being regarded as excessive. However, there are very limited views of the air-conditioning units on the north-east elevation closest to the highway (Shirehall Lane), which themselves significantly restrict public views of the air-conditioning units positioned behind.
20. Overall, the RDG SPD sets out that flues, ventilation units and other services that appear as 'add-on' elements will not normally be accepted, and therefore the development on the north-east elevation would conflict with this guidance. However, I do not find the air-conditioning units on the north-east elevation to be visually obtrusive nor cause harm to the character and appearance of the appeal property and surrounding area. Accordingly, I find the air-conditioning units on the north-east elevation do not conflict with the LP Policy CDH01 insofar as it requires high quality development that responds sensitively to the distinctive local character and design. I shall therefore grant planning permission for this part of the matters alleged by the enforcement notice.

#### *Conditions*

21. I have taken account of the conditions suggested by the Council and guidance within the National Planning Policy Framework and Planning Practice Guidance.
22. The noise assessment identifies the rating excesses for the proposed condenser units on the west elevation (shown as the flank) as 12dB during operational hours and recommends fully enclosing the units in acoustic enclosures with sound

reduction of a minimum of 22dB(A). I note that the Environmental Health Officer advised that the air-conditioning units should not impact detrimentally upon local residents, subject to conditions being imposed. Given the proximity of the units to nearby sensitive receptors, I consider it is necessary to impose a condition restricting noise levels and a further condition requiring the mitigation measures recommended within the noise impact assessment to be implemented and retained in order to protect the living conditions of neighbouring occupants.

23. A condition requiring the submission of and approval of details of the acoustic enclosure(s) as required by the noise assessment is necessary to protect the character and appearance of the area.

### **Ground (f)**

24. 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
25. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice and the Council has confirmed that its purpose is to remedy the breach of planning control.
26. The appellant's case under ground (f) relates to the planning merits of the air-conditioning units erected on the north-east elevation (flank elevation), which I have considered under ground (a) above. As set out under ground (a), I intend to grant planning permission for the units which have been erected on the flank (north-east) elevation. Given that the allegation is the installation of air-conditioning units, the requirement to remove the units would remedy the breach and is not therefore excessive. Planning permission will be granted by virtue of section 180 of the Act for the air-conditioning units erected on the north-east elevation.
27. There are no other reasons that the requirements would be excessive and therefore the appeal under ground (f) fails.

### **Conclusion**

28. I have concluded that the air-conditioning units installed on the north-east elevation of the appeal property do not cause harm to the character and appearance of the appeal property and the surrounding area and that planning permission should be granted, subject to the conditions contained within the Formal Decision, for this part of the matters alleged in the notice.
29. I have found that the air-conditioning units installed on the south-east elevation of the appeal property have caused harm to the character and appearance of the area. Thus, there is conflict with the development plan as a whole and there are no material considerations which indicate that a decision should be taken other than in accordance with the development plan and so the appeal under ground (a) fails in respect of this part and planning permission should be refused.

30. Thus, for the reasons given above, I find that the appeal should succeed in part only, and I will grant conditional planning permission for the air-conditioning units installed on the Existing North-East Elevation (flank elevation), but otherwise I will uphold the notice, with corrections, and refuse to grant planning permission in respect of the air-conditioning units installed on the Existing South-East Elevation (rear elevation). The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

### **Formal Decision**

31. It is directed that the enforcement notice is corrected by:
- i. In section 3 of the notice, deletion of the allegation in full and replacing it with 'Without planning permission, the installation of air-conditioning units on the south-east elevation and north-east elevation of the property, as shown edged red on attached Drawing 01A'.
  - ii. In section 5 of the notice, deletion of the requirement in full and replacing it with 'Remove the air-conditioning units from the south-east elevation and north-east elevation of the property'.
  - iii. Deletion of Drawing 01 and its replacement with Drawing 01A, as attached to this decision letter.
32. Subject to the corrections above, the appeal is allowed insofar as it relates to the air-conditioning units installed on the Existing North-East Elevation and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the installation of air-conditioning units on the Existing North-East Elevation of the property at 5 Shirehall Lane, London, NW4 2PE and subject to the following conditions:
1. The level of noise emitted from the air-conditioning units hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.
  2. Within one month of the date of this decision, details of the acoustic enclosure(s), as recommended in section 5.5.1 of the Noise Impact Assessment prepared by DAA Group, dated 16th July 2022, (submitted under planning application reference 22/4213/RCU), shall be submitted to the local planning authority for approval in writing. The submitted details shall include technical specifications demonstrating a minimum sound reduction of 22dB(A), and visual details of the materials, colour and dimensions of the enclosure(s).
  3. The mitigation measures detailed in the Noise Impact Assessment prepared by DAA Group, dated 16th July 2022, (submitted under planning application reference 22/4213/RCU), insofar as they apply to the Existing North-East Elevation (interpreted from references to the "West Elevation"), including the approved acoustic enclosure(s), shall be implemented in full within three months of the date of approval of the details submitted under this condition. The air-conditioning units shall not be used until the acoustic enclosure(s) have

been installed in accordance with the approved details and shall be retained thereafter.

33. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the installation of air-conditioning units on the south-east elevation of the property and planning permission is refused in respect of the installation of air-conditioning units on the south-east elevation of the property at 5 Shirehall Lane, London, NW4 2PE on the application deemed to have been made under section 177(5) of the Act.

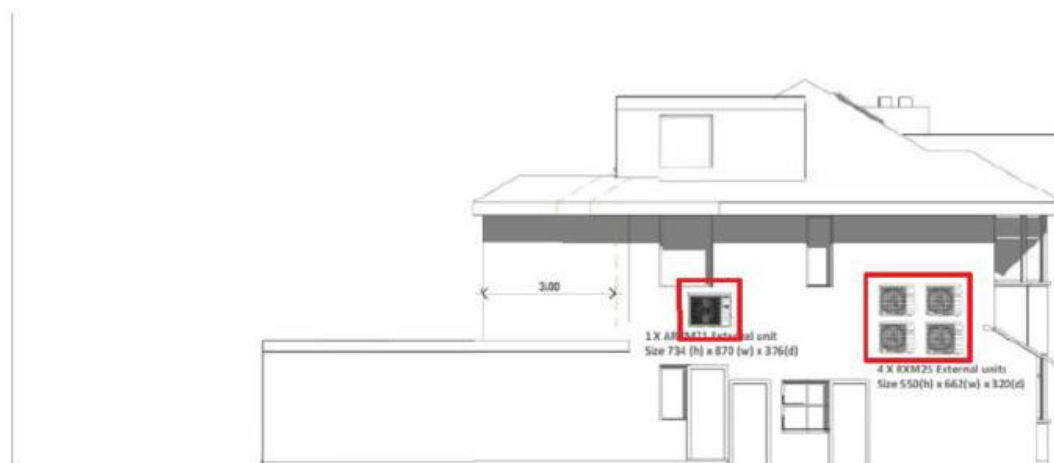
*E Brownless*

INSPECTOR

## Drawing 01 A



Existing South-East Elevation



Existing North-East Elevation