



Appeal Decisions

Site visit made on 10 February 2026

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 February 2026

Appeal A Ref: APP/X5210/D/25/3359338

9 Briary Close, London NW3 3JZ

- 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 Ashley Donoof against the decision of the Council of the London Borough of Camden.
- The application Ref is 2024/3724/P.
- The development proposed is Retrospective application for 3x AC units on the roof.

Appeal B Ref: APP/X5210/C/25/3359336

9 Briary Close, London NW3 3JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Ashley Donoof against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 12 December 2024.
- The breach of planning control as alleged in the notice is The installation of 3x air conditioning units on the flat roof of the dwelling.
- The requirements of the notice are to:
 1. Completely remove the 3x air-conditioning units; AND
 2. Remove any resulting debris from the site and make good any resulting damage.
- The period for compliance with the requirements is:
ONE(1) month.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for 3 x AC Units on the roof at 9 Briary Close, London NW3 3JZ in accordance with the terms of the application, Ref 2024/3724/P, subject to the following conditions:
 - 1) The development shall be retained in accordance with drawing nos: site plan; 124 Rev 03 Pre-existing roof layout; 125 Pre-existing front and rear elevations; 134 Rev 10 Proposed roof layout and 135 Rev 01 Existing front and rear elevations.
 - 2) The development shall be retained hereafter in accordance with the details set out in the 'Plant Noise Assessment' (Reference 13663.RP01.PNA.2, Prepared 19 August 2024, Revision Number: 2) (RBA Acoustics).

Appeal B

2. It is directed that the enforcement notice is varied by:

At section '5. WHAT YOU ARE REQUIRED TO DO', the deletion of the words
"Within a period of ONE (1) month of the notice taking effect:"

and their substitution with the words:

"Within a period of THREE (3) months of the notice taking effect".

3. Subject to this variation, the enforcement notice is upheld.

Preliminary Matters

4. The appeal in respect of Appeal B was submitted on the grounds set out at sections 174(2)(a) and 174(2)(g) of the Town and Country Planning Act 1990 (as amended) (the Act). However, where an enforcement notice is issued after 25 April 2024, an appeal on ground (a) is barred if the requirements of section 174(2A) of the Act are met. Namely, if the notice in relation to the related application was issued: 1, Within the time allowed for the determination of the application; OR 2, Within two years of the date on which the related application ceased to be under consideration. In this instance the term 'ceased to be under consideration' is taken to be the point at which the related application was determined by the Council.
5. As a consequence with regard to Appeal B, the appeal on ground (a) is barred, and thus Appeal B proceeds purely on ground (g). Thus, the planning merits of what is being enforced against cannot be considered in relation to ground (g). However, as Appeal A is an appeal made under section 78 of the Act against the refusal of planning permission for the 3x air-conditioning (AC) units on the roof of the appeal building, I shall consider the planning merits therein and will deal with Appeal A in the first instance. In doing so I have revised the development description to remove superfluous wording and ensure that it describes acts of development. I am satisfied that in doing so no party would be disadvantaged.

Appeal A

Main Issue

6. The main issue is the effect of the appeal scheme on climate change and energy efficiency.

Reasons

7. Camden Local Plan (CLP) Policies CC1 and CC2 set out the Council's approach to climate change mitigation and adaptation. CLP Policy CC2 states that all development should adopt appropriate climate change adaptation measures, including measures to reduce the impact of urban and dwelling overheating, including the application of the cooling hierarchy. The supporting text¹ to this policy sets out the cooling hierarchy and advises that active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates a clear need for it having considered all of the other measures incorporated within the hierarchy.
8. The appeal property has a lengthy recent planning history including extensions at ground level² and roof level³, the installation of a roof-mounted air source heat pump⁴ (ASHP) and roof-mounted solar PV panels⁵, supported by a battery storage system. The Council have acknowledged that the appellant's 'Overheating Risk & Energy Assessment' report and its subsequent update demonstrate that the main living areas of the appeal property 'come close to meeting the passing criteria' regarding overheating assessment. However, particular note is made of the absence of ceiling fans and a Mechanical Ventilation with Heat Recovery with air

¹ Paragraphs 8.41 – 8.43

² LPA Ref No: 2021/4062/P

³ LPA Ref Nos: 2020/5246/P and 2021/3827/PE

⁴ LPA Ref No: 2022/0830/P

⁵ LPA Ref No: 2022/2231/P

tempering system (MVHR+), and further detailed justification for the need for the inclusion of 3 AC units to cool the building.

9. The appellant's commentary on the appeal scheme and measures already taken at the appeal property against the cooling hierarchy goes some way to explaining the absence of both ceiling fans and the MVHR+, both of which the Council consider should have been incorporated prior to the AC system. I find the appellant's reasoned justification in these respects to be compelling. However, it seems to me that there remains limited technical justification for the 3 AC units and the need for that level of system to cool the building. In the absence of such the appeal scheme would amount to a technical breach of the provisions and aims of CLP Policy CC2.
10. However, the range of works already undertaken by the appellant at the appeal property documented within the property's planning history is extensive. Moreover, the opportunities to retrofit an existing property can typically be more limited and constrained, and more expensive than incorporation within new-build properties or new-build extensions to existing properties. The Council has not actively challenged the appellant's assertions that the building's energy performance has already been significantly enhanced by the steps already taken, or that even with the appeal scheme's AC system the building still performs significantly better than it did prior to the range of works undertaken.
11. It seems to me therefore that the wider range of works undertaken at the appeal property as set out within the planning history demonstrate a continued commitment to the principles set out by the cooling hierarchy and the aims and provisions of CLP Policy CC2. Whilst I am not persuaded that there is sufficient technical justification for the three AC units in the context of CLP Policies CC1 and CC2, it is clear that the appellant has considered and implemented where practicable the provisions of the cooling hierarchy. Although not fully compliant with the provisions of CLP Policies CC1 and CC2, there are material considerations that lead me to conclude that the appeal scheme would not be inconsistent with the broad aims and provisions of those policies. Furthermore, although not decisive, it is clear that the extensive combination of measures and steps already taken, together with the AC system, suit the appellant's particular needs and the constraints of a retrofitted property.

Other Matters

12. The air conditioning units are mounted at roof level on a four-storey building. From ground level some of the roof-top paraphernalia is visible, but is neither intrusive nor harmful. Although it will become progressively more visible from elevated positions of other properties nearby, the units are well sited towards the centre of the expanse of flat roof. The Council concluded that there would be no harm to character or appearance and I agree. There would be no conflict with CLP Policy D1 in this respect.
13. The appeal site lies within a residential setting with a number of residential properties nearby. The Council were satisfied with the conclusions of the appellant's acoustic assessment and the effects of the scheme in terms of noise and vibration and effects on amenity did not form a reason for refusal. I have not been presented with any further compelling evidence that would lead me to reach

a different conclusion in this respect and there would be no conflict with CLP Policy A1 as a consequence.

Conditions

14. I have considered the conditions as suggested on the Council's appeal questionnaire. As the air conditioning units are already in place, the time limit and plans conditions in the form and wording suggested would not be appropriate, but I have imposed a different condition to ensure that the scheme is retained in accordance with the submitted plans and details. A condition to ensure compliance with the conclusions of the acoustic assessment is also necessary and reasonable in the interests of the living conditions of occupiers of neighbouring properties.

Conclusion in respect of Appeal A

15. For the reasons set out, whilst the appeal scheme would amount to a technical breach of the requirements and provisions of CLP Policies CC1 and CC2, I am satisfied that material considerations exist sufficient to justify a decision otherwise than in accordance with the development plan. On this basis, I conclude that Appeal A should succeed.

Appeal B

16. Appeal B proceeds purely on ground (g); that any period specified in the notice to carry out the required steps falls short of what should reasonably be allowed. In this case, the notice specifies the removal of the air conditioning units and the removal of any resulting debris from the site and to make good any damage within 1 month.
17. Although air conditioning units are relatively small items of plant, I have some sympathy for the appellant's concern that their removal would be likely to require the services of a specialist technician. And, once the external units themselves have been removed, there would remain other pipework and ducting requiring removal, at height. It is not unreasonable to expect that there would potentially be a considerable lead-in time to secure such services which, within a period of one month, may not be feasible. An extended period of time, to three months, would provide a sufficient period that would be more able to accommodate any delays in securing the services of the appropriate trade. Appeal B therefore succeeds on ground (g) and I shall amend the notice accordingly.

Overall conclusion

18. For the reasons explained in the preliminary matters, although Appeal B was submitted on grounds (a) and (g), by virtue of section 174(2A) of the Act, an appeal is barred on ground (a). Appeal B therefore proceeds on ground (g) only and the planning merits of the matter enforced against cannot be considered under that ground and that appeal. However, for the reasons set out in respect of Appeal A, and having considered all other matters raised, I conclude that the s78 appeal succeeds.
19. With regard to Appeal B, I conclude that the period for compliance within the notice falls short of what is reasonable to carry out the required works. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent and so the enforcement notice will be upheld with a variation.

20. Section 180(1) of the Act however provides that, where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. This means that the planning permission granted by virtue of the success of Appeal A overrides the notice to the extent that the planning permission authorises what is being enforced against.

G Robbie

INSPECTOR