



Appeal Decision

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26 FEBRUARY 2026

Appeal Ref: APP/N5090/X/24/3346075

59 Sutton Crescent, Barnet, EN5 2SW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr K Ghadyani against the decision of the Council of the London Borough of Barnet.
 - The application ref 24/1381/191, dated 8 April 2024, was refused by notice dated 30 May 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is retention of 2 No. air conditioning units.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant the LDC for the retention of the air conditioning units was well-founded. To succeed in the appeal, the appellant must prove on balance that each unit has been in place for a continuous period of 4 years prior to the date of the application, or that there has been no development. The Council confirmed that an enforcement notice had not been issued prior to the LDC application.
3. The replaced unit may be an air source heat pump (which can provide both cooling and heating) rather than an air conditioning unit (which can only provide cooling). However, it is clear that the parties understood the LDC application to refer to the two units installed at the host property and identified in the application plans as AC Unit 1 and AC Unit 2. The use of the description of air conditioning unit in the LDC application rather than air source heat pump therefore has no bearing, and clearly does not alter the appearance of the units. Although the replacement unit installed on the side of the house next to No. 61 may be properly described as an air source heat pump due to its technical specifications this does not materially affect its external appearance.
4. Other matters raised including the manufacturers installation guidelines, potential breach of building regulations and statutory nuisance caused by the sound levels, as well as the proximity to the site boundary are not matters to be considered as part of this determination which deals solely with the lawfulness of the works at the date of the LDC application.

Reasons

5. The parties accept that two air conditioning units were installed on the house by December 2017. One was at the rear of the house ("Unit 1"), and one was on the side wall adjacent to and facing the property at No.61 ("Unit 2").
6. Unit 1 is on the second floor and can be seen from various adjoining properties and rear gardens, and from the footpath and road on Lingholm Way. The views of the location of Unit 2 on the side of the house are much more limited, as can be seen in the submitted Google photographs from 2018. It can be seen in photographs that the top of the original Unit 2 could be seen from a limited part of the road and footpath on Sutton Crescent and there are also some views from a small part of the edge of the adjoining rear garden at No. 61. However, Unit 2 is located at first floor level within a small external passageway between the two properties, and so there was very little overlooking onto it. The original Unit 2 could not be seen from any other public viewpoint or nearby property.
7. The appellant states that both units remained in place until the original Unit 2 was replaced due to a malfunction. The occupier of the neighbouring property says that the replacement work took place in June 2023 which has not been disputed by either main party. This means that both original units were in place for more than 4 years and therefore became immune from enforcement action at that point.
8. Whilst information has been provided to suggest that Unit 1 is also a model which as not available until 2021/2022 this is far from clear on the information before me. Evidence regarding its serial number or other strong evidence to show that it has been replaced such as a first-hand witness regarding any such works or photographs to show a change in its appearance or location have not been provided. The photographs provided appear on balance to show the same unit in place on the rear throughout (Unit 1). There is no direct evidence before me to show that Unit 1 was replaced and the main parties accept that it has been in situ for more than 4 years before the making of the LDC application.
9. The original Unit 2 was also immune from enforcement action before it was replaced. The appellant states that the replacement is in the same location and that it used the same connection and brackets, although it does appear from the photographs submitted, including by the interested party dated 12 April 2024, that the replacement Unit 2 was located further towards the rear garden end of the side wall, and possibly at a lower level as it was no longer visible from the street on Sutton Crescent.
10. Section 55(2)(a)(ii) of the 1990 Act excludes from the definition of developmenworks for the maintenance, improvement or other alteration of any building which do not materially affect the external appearance of the building.
11. Caselaw¹ advises that for works to "materially affect" external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole. The building in this case is the house at No.59. The views of Unit 1 at the rear which is at the second-floor level can be clearly seen from various vantage points including from the public highway, and it does materially affect the external appearance of the house. However, the replacement Unit 2 on the side of the house next to No.61 can only be seen from

¹ Burroughs Day v Bristol CC [1996] EGCS 126

very limited vantage points, and indeed the photographs show that it cannot be seen from the street outside the house any more. Views of the original Unit 2 were also extremely limited, so that the change is minor.

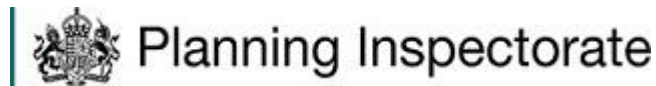
12. The configuration of the buildings at Nos. 59 and 61 with the passageway which is not overlooked means that the replacement unit does not materially affect the external appearance of No.59 and is therefore not development. The replacement unit is not materially different in appearance and the change in its position is only slight. Therefore, it does not materially affect the external appearance of the house as a matter of fact and degree.
13. Both of the units are therefore immune from enforcement action: Unit 1 because it appears on balance to have been there for a continuous period of more than 4 years prior to the date of the LDC application; and Unit 2 because the original unit had been there for a continuous period of 4 years before it was replaced, and the replacement falls within the exemption in section 55(2)(a)(ii) and is not defined as development.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the retention of 2 air conditioning units is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Zoë Frank

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 8 April 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

It has been shown on the balance of probabilities that Unit 1 had been installed more than 4 years before the date of the application (i.e. more than 4 years before 8 April 2024); and

Unit 2 does not fall within the definition of development under the Town and Country Planning Act 1990.

Signed

Zoë Franks

Inspector

Date: 26 FEBRUARY 2026

Reference: APP/N5090/X/24/3346075

First Schedule

2 air conditioning units.

Second Schedule

Land at 59 Sutton Crescent, BARNET, EN5 2SW

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **26 FEBRUARY 2026**

by Zoë Franks, Solicitor

Land at: 59 Sutton Crescent, BARNET, EN5 2SW

Reference: APP/N5090/X/24/3346075

Scale: Not to Scale

