



Appeal Decision

Site visit made on 6 July 2026

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 4th August 2026

Appeal Ref: APP/N5090/C/24/3355588

4 & 5 Accommodation Road, London NW11 8ED

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Joseph Cope against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 7 October 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission the installation of 8 air conditioning units to the roof of the building'.
- The requirement of the notice is to permanently remove the 8 air conditioning units from the roof of the property
- The period for compliance with the requirement is 3 months,
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (b) of the Town and Country Planning Act 1990 (the Act) (as amended). 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.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the installation of 8 air conditioning units to the roof of the building at 4 & 5 Accommodation Road identified on the enforcement plan.

Preliminary Matters

2. Since the appeal was lodged, the Barnet Local Plan 2021-2036 (the Local Plan) was adopted by the Council in March 2025. This replaces the Barnet Local Plan (Core Strategy) 2012 and the Barnet Local Plan (Development Management Policies) 2012 which were referred to in the enforcement notice. I have therefore had regard to the new policies of the Local Plan which include Policies CDH01 and ECC02 which are relevant to the appeal.
3. The appeal was made on grounds (a) and (b). An appeal under ground (b) is that the breach of planning control has not occurred as a matter of fact. However, there is no dispute that 8 air conditioning units have been installed on the roof of the appeal property. The development has therefore occurred as a matter of fact. An appeal under ground (c) is that what is alleged does not constitute a breach of planning control and the appellant's argument is that the matter alleged is not 'development.' The appellant acknowledges in his evidence that this argument can be addressed under ground (c). As the Council has addressed the arguments made by the appellant and indicated that ground (c) was more appropriate, there is no injustice to either party if I proceed to determine the appeal on ground (c) rather than ground (b).

4. An accompanied site visit took place which included viewing the air conditioning units from the roof hatch on the appeal building. The roof hatch also provided views of the rear gardens and rear elevations of the dwellings on Woodstock Road directly behind the appeal site. The Council was unable to obtain consent to access from the rear gardens of Woodstock Road looking towards the air conditioning units although two photographs have been provided by an occupier.

The appeal under ground (c)

5. This ground of appeal is that what is alleged does not amount to a breach of planning control. The burden of proof is on the appellant and the relevant test is the balance of probabilities. Section 55 of the Act defines 'development' as including the carrying out of building, engineering or other operations in, on over or under land. It comprises activities which results in some physical alteration to the land which has a degree of permanence. The appellant argues that the air conditioning units fall within an exception to the definition of 'development' set out in Section 55(2)(a)(ii) of the Act. That provision excludes works which do not materially affect the external appearance of the building.
6. In *Burroughs Day*¹ the Court held that it is not just the exterior of the building that is to be considered, but the effect on the external appearance. This must be judged in relation to the degree of visibility of the alterations by observers at different points outside the building. Alterations that are capable of being seen from any vantage point on the ground or in or on any neighbouring buildings are capable of affecting the external appearance. Vantage points need not be public, but they should not be unusual.
7. The air conditioning units are located on the roof of the appeal property. There are no public views of the development from Accommodation Road as the appeal building is within a row of buildings which are terraced. The front dormers block any views of the development from the front of the appeal property and the development is located on the rear roof.
8. To the rear, the appeal building backs onto rear gardens of largely semi-detached dwellings on Woodstock Road which runs parallel to Accommodation Road. From my site visit observations, a limited view of one air conditioning unit could be seen by standing at an angle through a gap between semi-detached dwellings. I accept that the general public walking along the pavement of Woodstock Road would be very unlikely to notice the presence of the air conditioning units on the appeal property.
9. Nevertheless, vantage points need not be solely related to views from the public realm. Alterations that are capable of being seen from any vantage point on the ground or in or on neighbouring buildings are capable of affecting external appearance. The photographs provided show that there are some views of the air conditioning units from rooms within one of the dwellings whose garden backs onto the appeal building at ground floor and bedroom level. The photographs show partial views of two banks of air conditioning units with associated pipework to either side of a roof hatch. Some of the units are set back from others and views are greater on the upper level compared to ground level. It is not the case as alleged by the appellant that the units are only visible from aerial views. Whilst the

¹ *Burroughs Day V Bristol CC* [1996] 1PLR;1EGLR 167

views are at the rear of the building only, there are nevertheless views from vantage points of permanent additions to the roof of the building.

10. As a matter of fact and degree, by reason of their physical attachment to the building and visibility from adjoining land and the number of units, they result in a material alteration to the external appearance of the appeal building. The matter alleged is not excluded from the definition of development by way of Section 55 (2)(a)(ii). As such, I find that the 8 air conditioning units are 'development' under Section 55 of the Act. Development has therefore occurred without express planning permission which constitutes a breach of planning control. The appeal under ground (c) fails.

The appeal under ground (a) and the Deemed Planning Application (DPA)

11. I have addressed whether or not the air conditioning units are 'development' for the purposes of the Act but not all development is harmful in planning terms. An appeal under ground (a) determines whether or not planning permission should be granted for the development.
12. Although the Council's reasons for issuing the notice do not specifically refer to the Conservation Area designation, I have a statutory duty to consider that designation. The appeal property is located within the Golders Green Conservation Area (the CA) which is a designated heritage asset.

Main Issues

13. The main issues are therefore (i) whether the development would preserve or enhance the character and appearance of the CA and the appeal property and (ii) whether the development harms the living conditions of occupiers of No 3 Accommodation Road and occupiers of the appeal property with particular regard to noise

Character and Appearance

14. Conservation Areas are designated heritage assets as defined by the National Planning Policy Framework(the Framework) and great weight is to be given to their preservation and conservation. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area.
15. The CA is predominantly defined by its coherent early 20th century commercial townscape comprising continuous parades of shops with residential accommodation above, strong building lines, traditional architectural detailing and the prominent transport centred urban form around the junction of Golders Green Road, North End Road and Finchley Road.
16. As Accommodation Road runs parallel to Golders Green Road, it serves as a service road to the shops and businesses on Golders Green Road which back onto it. The boundary of the CA is located along the rear of the buildings on the opposite side of Accommodation Road which includes the appeal building. The appeal building is therefore just within the CA boundary. The appeal building is located within a row of terraced buildings which has a mix of business use at ground level and some residential use at the upper levels. The character of the

surrounding area is therefore mixed with residential and commercial uses taking place.

17. The Character Appraisal refers to 'The urban character of Finchley Road and the crossroads contrasts dramatically with the quieter, intimate feel of the rear service roads at Accommodation Road.' Air conditioning units are specifically addressed in the Appraisal but only in the context of being an example of features which clutter rear service roads which is not the case in this appeal.
18. The development consists of 8 air conditioning units located on the roof at the rear of the appeal building. An extension to the roof included 4 front dormer windows following the removal of the front gable projection. Upper floors were subsequently converted from offices to an 8 bedroom HMO (Sui Generis). The air conditioning units were subsequently installed for the benefit of the HMO tenants.
19. I have already addressed that there are no public views of the development from Accommodation Road. There are some localised views of the development from the rear gardens and rear habitable rooms of dwellings of a dwelling on Woodstock Road directly behind the appeal building which are seen within the context of a rear boundary wall and roof line.
20. The appellant refers to air conditioning units not being common in residential areas, but air conditioning units are becoming more common and, in each case, need to be assessed on their own specific circumstances and location having regard to the character of the area.
21. Due to the siting of the air conditioning units to the rear of the appeal building, taken together with the limited views of them, the development does not harm the character and appearance of the appeal building or the CA as a whole. The development therefore meets the statutory objective of preserving or enhancing the CA.
22. For the reasons given, I conclude that the development does preserve the character or appearance of the appeal property and the CA. The development is also not in conflict with the relevant paragraphs of the Framework which address 'Conserving and enhancing the historic environment' or the statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990. I also find no conflict with Policy CH01 of the Local Plan or Policies D1, D3 and D6 of the London Plan which collectively refer to a design led approach to development and new development being appropriate to the context.

Living Conditions – Noise

23. The appellant has submitted a Noise Impact Assessment (the report) as part of this appeal. The Council's reason in the notice with regard to noise specifically refer to living conditions of No 3 Accommodation Road which the report has identified as the nearest noise sensitive property to the development.
24. The report was sent to the Council with the appellant's statement as part of the appeal procedure. The report states that it has been carried out in accordance with best practice and background noise levels were 46Db during day time and 41Db during night time. The dominant source of noise was road noise from the surrounding roads. With a calculated rating level of 39Db for the units, the noise level is predicted to be below the background noise levels for both day and night,

The report, therefore, concludes that the operation of the equipment is unlikely to be sufficiently intermittent to attract attention to the nearest noise sensitive property which is on Accommodation Road. I have no information to indicate that cumulative noise is an issue and the units are spaced apart on the roof. Whilst there are third party objections, two objections focus on matters other than noise and the third refers to potential for noise rather than actual noise when the units were in situ. The Council also refers to potential noise in the enforcement notice. I therefore have no reason to disagree with the findings and conclusion of the report with regard to noise.

25. The Council's reason for issuing the notice also alleges harm to the living conditions of occupiers of the appeal building. However, there is no explanation from the Council as to why it considers that the HMO occupiers are impacted by noise from development installed on the roof for their benefit.
26. On the basis of the information provided, I consider that the development does not result in an unacceptable effect on the living conditions of the occupiers of No 3 or occupiers of the appeal property. As such, the development complies with Policy EEC02 of the Local Plan which, amongst other things, refers to avoiding generation of unacceptable noise levels.

Other matters

27. I have noted the third party comments. Any issues arising from the grant of planning permission in 2022 for conversion to an HMO including loss of light and loss of privacy fall outside the remit of this appeal. The Council has not alleged loss of light arising from the development and given the distance between the development and the rear gardens of Woodstock Road, I agree with that view. The Council has not alleged the development causes harm to living conditions of occupiers of Woodstock Road. I do not consider that the extent and nature of the view is materially harmful when the previous view was of the existing brick wall and roof. Whilst the development has already occurred, the retrospective nature does not prevent the appellant from applying for planning permission as part of this appeal.

Conditions

28. Neither party has suggested any conditions for the development and as the development already exists, I do not consider that any conditions are required.

Conclusion

29. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.

E Griffin

INSPECTOR