The Planning Inspectorate

Appeal Decision

Site visit made on 6 November 2018

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2019

Appeal Ref: APP/G2815/C/18/3199907
4 Riverside Close, Oundle, Northants PE8 4DN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr James Boon against an enforcement notice issued by East Northants District Council.
- The enforcement notice was issued on 5 March 2018.
- The breach of planning control as alleged in the notice is 'Without planning permission, the siting of four air conditioning units at first floor height on the gable end of a detached dwelling house.'.
- The requirements of the notice are to remove all unauthorised air conditioning units along with any associated retaining structures, wiring and pipework.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Application for costs

1. An application for costs was made by Mr James Boon against East Northants District Council. This application is the subject of a separate Decision.

The Notice

2. The Council has confirmed that the Notice attacks only the four air conditioning units at first floor height on the flank elevation. The fifth air conditioning unit, which is sited 3m from the eastern façade on the ground, is not part of the allegation. The requirements of the Notice therefore only refer to those air conditioning units attacked in the allegation. I will address this further under ground (f).

Appeal on ground (c)

3. This ground 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'*.

4. In the appellant's view the units are de minimis and do not require planning permission or, without prejudice to that, are of such minimal visual and noise potential impact that under the notice ought not be required to be removed.

5. Section 55 (1) of the Act defines two limbs of development, namely operational development which means the carrying out of building, engineering mining or other development in on over or under land or a material change of use. The first is relevant to the current appeal and comprises activities which result in some physical alteration to the land[1] which has some degree of permanence. Section 55 of the Act excludes from the definition of development works which affect only the interior of the building or do not materially affect the external appearance of the building.

6. The four air conditioning units are visible within the street scene and are clearly a permanent addition to the building with new wiring and pipework. As a matter of fact and degree, I consider that the units affect the external appearance of the building as a whole. As such, I cannot accept the appellant's view that the installation of the air conditioning units amounts to a *de minimis* change. I therefore find that the four air conditioning units comprise development of land, and amount to an operation of development as defined by section 55(1). As a consequence, the appeal on ground (c) fails.

Appeal on ground (a)

Main Issues

7. The main issues in this case are the effect of the air conditioning units on:

- the living conditions of adjacent residential occupiers, particularly in relation to noise and disturbance; and
- on the character and appearance of the area.

Reasons

Living Conditions

8. The appellant has submitted a *Plant Noise Assessment* produced by acoustic consultants. This records that four air conditioning units were installed on the western façade at approximately 5m in height. These units are the subject of the Notice. A fifth unit, which is not attacked by the Notice, is sited 3m from the eastern façade on the ground. All the plant operates independently with each unit having its own thermostatic, time or manual controls.

9. The assessment is on the theoretical basis that all the equipment could operate together during the daytime, however this is considered an unlikely scenario. The daytime period is stated to be between 07:00 and 23:00 and the assessment is on the basis that the plant does not operate during the night time.

10. The assessment concludes that, even where the windows of the room are open, noise levels as a result of the mechanical plant would be below BS 8233 and WHO criteria for daytime resting. In addition, ambient noise levels in the existing environment are already higher than the predicted noise level. As such, the total internal ambient noise levels would not increase with the operation of the mechanical plant. The assessment concludes that the noise

[1] Section 336 of the Act defines building as including any structure or erection and any part of a building, but not plant or machinery comprised **within** a building.

from the mechanical plant units would have a low impact at the noise sensitive receptors[2] (NSRs).

11. The Council has raised a number of concerns with the assessment, including the failure of the assessment to identify the neighbour's bedroom rooflight as a sensitive receptor, the restriction to a daytime period between 07:00 and 23:00, the lack of an explanation for the deviation in measured and ambient sound levels at the front of the property, the assessment being carried out in March when the expected period of use would be the summer months.

12. I am satisfied that a planning condition could be used to constrain mechanical plant operation outside of the stated hours. This is because there is nothing before me to demonstrate that the appellant wants or needs to use the equipment outside these hours and that the imposition of such a condition would not be unduly restrictive[3]. The evidence produced also relates to these hours of intended operation and as such, if permission were given, it would be necessary to restrict the operation of the units to those hours. Such a condition would, in my view, be capable of being monitored and enforced as any operation outside the hours of restriction could be witnessed or recorded.

13. While I appreciate that there is no NSR identified at the rooflight position of No 3, there is an NSR at the first-floor level (NSR 2). There have been no objections raised by the occupiers of No 3, and while I appreciate this is not determinative of itself, taken together with the NSR 2 position, I consider that the noise emitted by the units is unlikely to result in unacceptable harm to the living conditions of the occupiers of No 3, subject to limitations to daytime operation.

14. On the basis of the evidence provided and the stated hours of operation in the *Plant Noise Assessment*, I consider that the four air conditioning units on the first-floor gable of the appeal property do not result in an unacceptable effect on the living conditions of the occupiers of No 3. As such, the development complies with Policy 8 of the North Northamptonshire Joint Core Strategy 2011-2031 (adopted July 2016) (JCS) which seeks to protect amenity by not resulting in an unacceptable impact on the amenities of future occupiers, neighbouring properties or the wider area.

Character and Appearance

15. The appeal site is located within a cul-de-sac which has attractive well designed detached dwellings on the north side of the road only and agricultural land on the south side. The appeal dwelling is a recently remodelled dwelling set on higher ground than the road. There are steps up to the front door, with a room laid out as a gym at lower ground level below the steps. Access to the gym is from outside the dwelling.

16. The location of the units attacked by the Notice is such that they are clearly forward of the adjacent dwelling No 3. They are prominent in views from approximately in front of No 1 travelling towards the appeal site. While I noted that the number of air conditioning units visible as you progressed along the

[2] The noise sensitive receptors identified are the rear garden of 3 Riverside Close (NSR 1), first floor level of 3 Riverside Close (NSR 2) and first floor level of 5 Riverside Close (NSR 3).
[3] I note that the appellant's proposed planning conditions refer to operation of units between 6am and midnight not the hours referred to in the plant noise assessment as daytime hours. I have considered the development on the basis of the hours within the plant noise assessment which was submitted after the appeal statement.

road varied due to visual interruptions such as parts of roofs or chimneys at least two units were visible at any time and all four were visible when no visual interruptions. The units, whether seen in two's or all together, are prominent protrusions at first floor level on the gable. They are also a visual intrusion when the dwelling is viewed from the road looking north.

17. The air conditioning units appear as utilitarian bolt on additions to this façade, unrelated to the architecture of the remodelled house. As such, I consider that they detract from the architecture of the dwelling and the overall character and appearance of the street scene. They also amount to poor design due to their prominence when approaching from the west and when looking directly north at the dwelling. The JCS seeks to ensure high quality development and considers good design is critical in ensuring that proposals create sustainable, connected , characterful and healthy places. The units are contrary to JCS Policy 8 which requires , amongst other things, that development responds to the site's immediate and wider context and local character to create buildings which draw the best out of that local character without stifling innovation.

18. In addition, the units are contrary to the National Planning Policy Framework (the Framework) which states that the creation of high-quality buildings is fundamental to what the planning and development process should achieve. Planning decisions should ensure that developments are visually attractive as a result of good architecture. The appeal development is, in my view, poor design and thus contrary to the Framework.

19. The appellant has put forward a scheme to box in the air conditioning units with pine cladding in the same profile as existing cladding and painted the same colour. The cladding would be applied in a louvered effect to allow for ventilation of the units. This would, to my mind, fail to overcome the visual harm of the development. The projection and louvred effect would appear as a projection at a high level unrelated to the form of the dwelling. While the cladding would match the cladding on that part of the elevation there is no architectural reason for such a projection, it merely attempts to hide a development I have found to be unacceptable. Again, I find this would be poor design and contrary to JCS Policy 8 and the Framework.

Conclusion on ground (a)

20. While I have found no unacceptable impact on the amenities of existing occupiers, neighbouring properties or the wider area as a result of noise nuisance, this does not outweigh the harm to the character and appearance of the area. The appeal on ground (a) therefore fails.

Appeal on ground (f)

21. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellant must specify specific lesser steps which, in their view, would overcome the objections to the appeal development.

22. The appellant considers that the requirements of the Notice would result in the appellant being required to remove the ground mounted air conditioning unit on the east side of the property which is not alleged in the notice to be a breach of planning control. While I accept that the wording of the requirements in isolation may lead to a lack of clarity, the Notice clearly only

attacks the siting of four air conditioning units at first floor height on the gable end of a detached dwelling house and as such cannot require the removal of the fifth air conditioning unit on the east side of the house. However, for clarity I will vary the requirements to only refer to the removal of the four air conditioning units and external fittings at first floor height on the gable end.

23. The appellant also considers that the removal of all wiring and pipework, including internal wiring and pipework and the consumer units in each room is excessive. These elements are stated to be wholly internal and do not affect the external appearance of the building and do not require planning permission. It would be expensive to remove these elements including making good and thus the requirements of the notice are excessive.

24. The appellant has made it clear that he wishes to pursue alternative locations for air conditioning units if this appeal were to fail. The internal wiring and pipe work associated with the four units attacked may be capable of reuse were external alternative units permitted.

25. The internal wiring and pipework are integral to the development that has taken place and facilitate that development. As such, requiring the removal of the wiring and pipework is acceptable. However, I accept that the removal of the internal wiring and pipework would be likely to be internally disruptive and, on the evidence now available in relation to the appellant's wish to pursue alternative locations for external plant, I consider it reasonable to permit the internal wiring and pipework to remain. I will vary the requirements to allow this.

26. The appeal under ground (f) succeeds to this limited extent and I will vary the Notice as set out above.

Appeal on ground (g)

27. This ground of appeal is that the time given to comply with the notice is too short. The Council has given a 28-day compliance period. The appellant has requested a period of 12-months.

28. The appellant is stated to travel frequently on business and therefore he considers the 28-day compliance period is impractical. The appellant would wish to consider alternative locations for the air conditioning units if his appeal were dismissed. As such, he considers that a minimum period of 12 months is required to allow such a scheme to be designed, a planning application to be progressed and the works carried out.

29. There is no evidence to demonstrate it would take more than a day or two to remove the external air conditioning units and external fittings. However, in order to enable an alternative location for air conditioning units to be pursued I consider it would be appropriate to allow a longer compliance period. Notwithstanding this, a 12-month period seems excessive. I will therefore vary the compliance period to six months, which would be a reasonable period to comply with the notice, to design an alternative scheme, determine a planning application and implement the works. The appeal on ground (g) therefore succeeds to this limited extent and I will vary compliance period of the Notice accordingly.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

31. It is directed that the enforcement notice be varied by:

- Delete paragraph 4.1 in full and substitute it with 'Remove all four air conditioning units and external fittings at first floor height on the gable end'.
- In paragraph 5.1 delete the words '28 days' and substitute it with the words 'six months'.

Subject to these variations the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilda Higenbottam

Inspector