



Appeal Decision

Inquiry held on 10 February 2009

Site visit made on 10 February 2009

by **Katie Peerless** Dip Arch RIBA

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
23 February 2009

Appeal Ref: APP/X5990/C/08/2076382

The buildings and associated land at 114 Lisson Grove and 48 Broadley Terrace, London NW1 6LP

- 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 Ellis Elias Broadley Investment Ltd against an enforcement notice issued by City of Westminster Council.
- The Council's reference is ENF/07/36952/K.
- The notice was issued on 23 April 2008.
- The breach of planning control as alleged in the notice is the installation of four twin fan and eight single fan air conditioning units.
- The requirements of the notice are:
 - (i) Remove four twin fan and eight single fan air conditioning units affixed to the rear of 114 Lisson Grove and side elevation of 48 Broadley Terrace at first floor level and all associated fixtures and fittings as shown in photographs A and B and as identified in Plan A attached to the enforcement notice
 - (ii) Make good any damage caused by the installation or removal of these air conditioning units.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The site and surroundings

1. The appeal property is a three storey building situated on a corner plot within the Lisson Grove Conservation Area. It is currently in use as television and recording studios, with associated offices, and is included on the Council's list buildings of special merit that may be considered for statutory listing at a future date.
2. The air conditioning units that are the subject of this appeal are located on first floor walls around an area roof above the Broadley Terrace entrance to the building.

Planning history

3. A previous enforcement notice was issued in 2006 against the installation of seven air conditioning units fixed to the building on the first floor of the Lisson Grove elevations. The notice was complied with, but a planning application (ref: 06/05377/FULL) submitted later that year for the retention of one of these units and the relocation of the others to an enclosure on first floor flat roof was refused.

Ground (d)

4. The appellants maintain that there have been a number of air conditioning units on the roof above the Broadley Terrace entrance for at least four years prior to the issue of the enforcement notice. These units are not the original ones that were first installed, but are more compact, up-to-date replacements, in different locations, installed during the course of alterations and refurbishment work to the building. This work began in July 2004 and was completed about a year later. The change in the units therefore occurred within the four years prior to the issue of the enforcement notice in April 2008. The appellant nevertheless consider that at least some of the units have gained immunity from enforcement action through the passage of time.
5. The appellants have produced a photograph¹ showing two cylindrical units standing on the flat roof and three attached to the walls. There was possibly another unit located between the two on the roof, but the photograph is not definitive on this. The roof has now been reconfigured and includes a glazed rooflight where the cylindrical units once stood.
6. The type and locations of the units on site at present are agreed to be different to those that were first installed. These differences are claimed by the appellants to be insignificant, particularly as the replacement units are smaller than the originals. Nonetheless, they are not the equipment that had been in place for more than four years, nor are they an exact substitution for it. In particular some of them are in different, more visible, positions. In these circumstances, I find that the units concerned have not gained the immunity from enforcement action claimed for them by the appellants. The appeal on ground (d) consequently fails.

Ground (c)

7. The appellants submit that, in any event, the replacement of obsolete units with others of a similar appearance in a similar location is not development requiring planning permission. This might be the case if authorised units had been directly replaced on a like-for-like basis, but, as explained in the preceding paragraphs, this is not the case here. In addition, some of the units are replacements for those that had to be removed from the Lisson Grove frontage following the issue of the first enforcement notice. This argument could therefore only possibly apply to the five or six units shown in the photograph: the remainder of the units are new installations.
8. The appellants also claim that the units are not alterations that '*materially affect the external appearance of the building*'² and are consequently not development. In support of this contention, they note that the units are seen from a limited number of viewpoints and some of them can only be glimpsed.
9. The approach to be taken when deciding whether an alteration is '*material*' in this context is set out in *Burroughs Day v Bristol City C [1996]*. The judgment found that alterations which can be seen from any single vantage point on the ground or in any neighbouring building can materially affect the external appearance but that the extent to which the alteration is visible, and from where it is visible, may affect how material is the effect of the alterations.

¹ Appellant's Appendix 6

² S55(2)(a)(ii) of the Town & Country Planning Act 1990

10. The appellants invite me to consider the units individually and make a judgement on which, if any, are seen in such restricted circumstances that they are not considered to be material. At the site visit, I was able to see at least part of all twelve units, albeit some of them from very restricted locations, but others are quite obvious and easily discernable from street level.
11. The Council has produced a numbered photomontage³ that demonstrates that all the units can be seen from the adjacent building. From the road, units 6, 7, 8, 10 and 11 certainly seem to me to be prominent enough to significantly affect the appearance of the building. Units 1, 2, 3, 4, 5, 9 and 12 have less impact but they nonetheless add to the harmful clutter noted above. The appeal on ground (c) consequently fails.

Ground (a)

12. The main issues on this ground of appeal are the effect of the air conditioning units on, firstly, the character and appearance of the Lisson Grove Conservation Area and, secondly, on the living conditions of occupiers of neighbouring properties.

Character and appearance

13. The air conditioning units that I have found need planning permission are, in my opinion, harmful to the appearance of the conservation area. They introduce a utilitarian clutter into the first floor recess between the buildings which, in my view, is unsightly and inappropriate. The units are contained within white, powder-coated metal casings that stand out against the background of mellow brickwork on which they are sited. I note the presence of ductwork and air conditioning plant on the adjacent building but this does not, I consider, justify the introduction of additional harmful elements in proximity to them.
14. However, I am mindful that the building could not be used for its current uses without air conditioning and, from what I observed at the site visit, the internal layout is such that it might well need some form of mechanical extraction even if in another use. I also saw at the site visit that there is limited opportunity to relocate the plant to another part of the building, given that planning permission has been refused for the use of the Lisson Grove elevations for this purpose.
15. The current location of the plant, whilst visible, is not an important one in terms of the overall architectural interest of the building, which is concentrated on the decorative red brick front elevation. The plant is located on two walls – one recessed from the Broadley Terrace elevation and the other a side wall of the main building and the appellants have suggested the possibility of screening and painting the equipment to ensure that it would be less prominent than at present. The facilities provided within the building are, I am told, well used and popular and it would be unfortunate if the use was forced to cease because a suitable solution to the problem of supplying air conditioning to the internal spaces could not be found.

³ Photograph A attached to the enforcement notice

16. I consider that physical screening, either through planting or some other form of approved barrier, would lessen the impact of the equipment. Those units at low level could be readily hidden and if all the units were painted in a colour that did not contrast so strongly with the surrounding brickwork, even those at a higher level would be significantly less obvious. I find that these measures would be sufficient to mitigate the effect of the units on the character and appearance of the area to an acceptable extent. Conditions attached to a planning permission could ensure that this is carried out.

Living conditions

17. Turning to the impact of the units on the living conditions of neighbours, the Council's objections relate to the noise that could be generated by them. I note that there have been some problems with noise in the past, mainly relating to obsolete equipment, which have now been resolved to the satisfaction of the Environmental Health Department of the Council. The existing units are, at present, functioning without causing undue disturbance to other occupiers. Of course, any malfunction of the equipment could result in noise problems in the future, but this is often the case with any externally mounted mechanical equipment. The situation could be effectively remedied through the intervention of the Environmental Health Department and the possibility of some future repair or maintenance of the equipment being required is not a reason to refuse planning permission in this instance. I find therefore that there is no conflict with policies ENV6, STRA 16 and STRA 17 of the City of Westminster Unitary Development Plan 2007 (UDP) that seek to protect residential amenity and reduce noise levels.

Conditions

18. In addition to the conditions discussed above, the Council requested that I impose a condition relating to the hours of operation of the air conditioning units, to prevent undue noise outside normal working hours. I agree that it is possible that any noise from the units could be more discernable when other background noise is less and could therefore cause disturbance at those times. I shall therefore impose a condition requiring that the units are not used other than between the hours of 0800 and 2000 on Mondays to Fridays, 0800 and 1300 on Saturdays and not at all on Sundays.

19. The appellants consider that the condition would be unnecessary as there have been no recent complaints about the level of noise. However, although I am told that the units do not normally run outside the hours outlined above, and are, in fact, normally shut off by 1830, it is possible that the pattern of usage could change in the future. The condition would then allow the Council to control any out-of-hours noise. The Council wanted even shorter hours of operation, but I consider those set out above to be reasonable, given the location of the site and the prevailing background conditions.

Conclusions

20. I have found that units have not gained immunity from enforcement action through the passage of time and that they materially affect the external appearance of the building. They are, therefore, development that needs planning permission. Whilst I have found that the units are harmful to the character and appearance of the conservation area in their present form, I have also concluded that this harm could be effectively mitigated.

21. Consequently, I find that, once screened, the installation would comply with UDP policies STRA27, STRA28, DES5, DES6 and DES7 and the relevant supplementary planning guidance which seek to ensure high standards of design and protect the character and appearance of the surrounding, historic area.
22. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a). Consequently, the enforcement notice will be quashed and planning permission will be granted for the units. The appeals on grounds (f) and (g) do not therefore need to be considered.

Formal Decision

23. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission 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 four twin fan and eight single fan air conditioning units on the building at 114 Lisson Grove and 48 Broadley Terrace, London NW1 6LP referred to in the notice, subject to the following conditions:
- 1) Within two months of the date of this decision, a scheme for painting the external surfaces of the air conditioning units hereby permitted shall be submitted to the local planning authority for approval. The approved scheme shall be fully implemented within two months of the date of the written approval and shall be maintained thereafter, unless otherwise agreed in writing with the local planning authority.
 - 2) Within two months of the date of this decision, a scheme for screening the air conditioning units hereby permitted shall be submitted to the local planning authority for approval. The approved scheme shall be fully implemented within two months of the date of the written approval and shall be maintained thereafter, unless otherwise agreed in writing with the local planning authority.
 - 3) The air conditioning units hereby permitted shall only be operated between the hours of 0800 and 2000 on Mondays to Fridays, 0800 and 1300 on Saturdays and not at all on Sundays.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Alun Alesbury	Of Counsel instructed by Planning and Project Management Services
He called	
Alvin Ormonde	Planning and Project Management Services, 32 Sneath Avenue, London NW11 9AH
Mr Ellis Elias	Broadley Studios, 48 Broadley Terrace, London NW1 6LG
Mr Mark French	84 Stonefield Road, Hastings, East Sussex TN34 1QA

FOR THE LOCAL PLANNING AUTHORITY:

David Blundell	Of Counsel, instructed by Martin Harris, solicitor, of Westminster City Council
He called	
Ms Sahara Ali-Hempstead BSc	Planning Officer, Planning Enforcement Team, Westminster City Council

DOCUMENTS

- 1 Letters of notification and circulation list
- 2 Representations from interested parties
- 3 S55 of the Town & Country Planning Act 1990
- 4 Page 2-3164 from Encyclopaedia of Planning Law & report of *Burroughs Day v Bristol City Council*, submitted by the appellants

PLANS

- A Location of vantage points from where air conditioning units are visible, submitted by the Council

PHOTOGRAPHS

- 1 Photographs of appeal site, submitted by the appellants