



Appeal Decision

Site visit made on 19 November 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/Z4310/C/19/3227405

Land at Fox Street, Liverpool L3 3BQ

- 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 Dr Michael Steiner of Fox Street Village Investors Association against an enforcement notice issued by Liverpool City Council.
 - The enforcement notice was issued on 22 March 2019.
 - The breach of planning control alleged in the notice is the development of blocks of residential accommodation and commercial units, shown as blocks A, B, C, D and E on the attached plan (EN1) not in accordance with planning permission 14F/1767 and 15F/1640.
 - The development to which the permissions relates are:
 - 14F/1767 To convert Swainbanks building and redevelop remainder of site with 3 no. five to six storey buildings to provide a total of 360 no. residential units, including 30 no. two and three bedroom apartments (Use Class C3), 300 no. one bedroom studios (Use Class C3) and 30 no. two, three, four and five bedroom cluster apartments in multiple occupation (Use Class C4) with ancillary gym, lounge, bistro and leisure facilities, central management suite, refuse and cycle storage, a 179 no. space basement car park accessed from Douro Street, amenity space and vehicular lay-by to Fox Street.
 - 15F/1640 To erect seven storey block comprising 40 no. flats with associated works.
 - The notice alleges that conditions have not been complied with in that:
 - Blocks B, C and E are constructed and are occupied. Physical works to enable the conversion of Block A to residential accommodation have also been undertaken and the building is also occupied. A material change of use of Block A has been undertaken from a business use to a mixture of residential accommodation and short-term letting accommodation.
 - Block D is under construction.
- However, the works undertaken to Blocks, A, B, C, D and E are not in accordance with planning permissions granted, references 14F/1767 and 15F/1640, by virtue of adherence to the approved plans and conditions attached to both planning permissions. Planning application 16F/2252 sought to remedy these breaches, but has not been granted due to failure to complete the associated S106 legal agreement. The result is a development which is poorly finished and fails to meet the minimum standards expected of residential development. This results in a poor quality environment and level of amenity and safety for occupiers and surrounding neighbours. It is unclear to the LPA whether the land has been fully and properly remediated in terms of land contamination, whether an appropriate drainage scheme or acoustic insulation have been installed and whether means of escape strategies are properly in place.
- The development fails to comply with plans and conditions associated with planning permissions 14F/1767 and 15F/1640 in respect of adequate and appropriate:
- car parking
 - cycle parking
 - site drainage

land decontamination
refuge storage facilities and a servicing arrangements
off-site highway works
acoustic insulation
amenity space / hard and soft landscaping, including tree planting
means of escape strategy
construction management plan relating to the construction of block D

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The development, as constructed, fails to comply with the following policies in the adopted Liverpool UDP:

GEN4 (Housing),
GEN8 (Environmental Protection),
HD18 (General Design requirements),
HD19 (Access for All),
HD23 (New Trees and Landscaping)
OE14 (Open Space in New Residential Developments),
H5 (New Residential Development),
T6 (Cycling),
T7 (Walking and Pedestrians),
T8 (Traffic Management),
T9 (Road Safety),
T12 (Car Parking Provision in New Developments),
EP2 (Contaminated Land),
EP11 (Pollution)

Also, SPG: New Residential Development; SPD: Ensuring a Choice of Travel and SPD: Design for Access for All.

These policies align with the principles, aims and objectives of National Planning Policy Framework and therefore carry considerable weight.

Liverpool Local Plan 2013-2033 (LLP) has been submitted to the Planning Inspectorate for examination. The policies contained within carry varying degrees of weight. It is recognised that these policies do not carry full weight as the Plan has not been adopted and dates for an examination in public are to be confirmed.

However it is considered that the following policies of the Liverpool Local Plan 2013-2033 are breached:

STP1: Spatial Priorities for the Sustainable Growth of Liverpool
STP2: Sustainable Growth Principles and Managing Environmental Impacts
STP5: Infrastructure Provision
STP6: Developer Contributions
H10: Conversion of Dwellings and Buildings
H13: New Housing — Physical and Design Requirements outside the City Centre
H14: New Residential Development Open Space Requirements
TP1 : Improving Accessibility and Managing Demand for Travel
TP5: Cycling
TP6: Walking
TP8: Car Parking and Servicing
TP9: Public Transport

The Human Rights Act 1998 means that it may be unlawful for a public authority to act in a way which is incompatible with a Convention right. In particular Article 8 (respect for private and family life), Article 14 (prohibition of discrimination) and Article 1 of Protocol 1 (peaceful enjoyment of property) apply to planning decisions. When a planning decision is made there is a further provision that the Authority must take into account, that of the public interest.

In this case the balance between the private interests of the leaseholders and occupiers of these residential blocks is a serious matter and must hold considerable weight. The Local Planning Authority is conscious that a large number of leases have

been granted on this site and that a number of units in blocks A, B, C and E are occupied. Nevertheless, the Council must discharge its function as Local Planning Authority and in particular in respect of enforcing planning legislation. It is conscious that only the Local Planning Authority has the power to take enforcement action under planning legislation.

It is also mindful of the extent to which the development, as constructed, departs from the approved conditions and the potentially serious nature of non-compliance. Matters such as land contamination, drainage and safe access within and surrounding the site may potentially affect the health and safety of occupants and visitors to the site.

The Council accepts that the requirements this Notice will affect rights enjoyed under Article 1, of Protocol 1.

Nevertheless, the Council would be failing in its duty as LPA if it did not take action against development which not only fails to comply with adopted national and local planning policies, but also fails to meet minimum standards of safety and amenity for occupiers and visitors.

In this case it is concluded whilst the requirements of the Notice will have a negative impact on the rights of individuals, that a failure to take action by the LPA would equally result in a failure to meet the requirements of Article 1 of Protocol 1 i.e. that the amenity and safety of occupiers would be affected by the manner in which this development has proceeded.

- The requirements of the notice are:
 1. Demolish blocks B, C, D and E identified on the attached plan OR
 2. Within 18 months of the date this Notice becomes effective, construct basement car and cycle parking, as approved by planning permissions 14F/1767, 15F/1640 and 15NW/2519; and
 3. Within 21 days of the date this Notice comes into effect, submit a verification report to the LPA, for approval, which shall confirm the adequacy of remediation in relation to potential risks to:
 - i. human health,
 - ii. controlled waters,
 - iii. property and service lines and pipes,
 - iv. adjoining land,
 - v. ecological systems, and
 - vi. Archaeological sites and ancient monuments.The report must demonstrate that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended uses; and
 4. Within 3 months of the approval of the details submitted in accordance with (3) above or (5) below, undertake any further remediation works as required in full accordance with the approved details;
 5. If Liverpool City Council do not approve the verification report submitted in accordance with (3) above, submit an updated report to Liverpool City Council Planning Service within 14 days and there shall be continued submission of such amended schemes as may be required until such time as Liverpool City Council does approve a detailed verification report for the decontamination of the site; and
 6. Within 21 days of the date this Notice comes into effect, submit a detailed scheme for the disposal of foul and surface water to Liverpool City Council Planning Service for approval; and
 7. If Liverpool City Council approve the details submitted in accordance with (6) above or (8) below, undertake the works in full accordance with the approved details within 3 months;
 8. If Liverpool City Council do not approve the details submitted in accordance with (6) above, submit to Liverpool City Council Planning Service a different detailed scheme for the disposal of foul and surface water within 14 days and there shall be continued submission of such amended schemes as may be required until such time

- as Liverpool City Council does approve a detailed scheme for the disposal of foul and surface water; and
9. Within 21 days of the date this Notice comes into effect, submit full details of a management strategy for the safe and inclusive means of escape of all building users in the event of fire evacuation from blocks A, B, C and E for approval; and
 10. If details submitted in accordance with (9) above or (10) below are approved, then within 21 days of the approval of the strategy submitted in accordance with (9) above, implement all recommendations included in the approved strategy;
 11. If Liverpool City Council do not approve the management strategy submitted in accordance with (9) above, then a different management strategy in accordance with (9) above shall be submitted within 21 days and there shall be continued submission of such amended strategies as may be required until such time as Liverpool City Council does approve a management strategy for the safe and inclusive means of escape of all building users in the event of fire evacuation from blocks A, B, C and E in accordance with (9) above; and
 12. Within 2 months of the date this Notice comes into effect, submit a detailed scheme of off-site highway works, including a 2 metre wide footpath contiguous to the site, a loading bay on Fox Street, the assessment and upgrade where necessary of substandard lighting and drainage on adjacent streets, the provision of dropped kerbs at new vehicular access points and the reinstatement of redundant cross-overs, provision for adequate visibility splays at access points and junctions and 2 no. bus stop facilities, with materials appropriate to the City Centre Public Realm Improvement Framework for approval; and
 13. Within 8 months of the approval of the scheme of off-site highway works submitted in accordance with (12) above or (14) below, implement all recommendations included in the approved strategy;
 14. If Liverpool City Council does not approve the scheme of off-site highway works submitted in accordance with (12) above, then a different scheme of off-site highway works in accordance with (12) above shall be submitted within 21 days and there shall be continued submission of such amended schemes as may be required until such time as Liverpool City Council does approve a scheme of off-site highway works submitted in accordance with (12) above; and
 15. Within 21 days of the date this Notice takes effect, submit to the LPA for approval, detailed evidence of the installation of acoustic insulation installed in blocks A, B, C, and E for approval or details of the proposed acoustic insulation to be installed in Blocks A, B, C, D and E; and
 16. Within 8 months of the approval of the acoustic insulation details submitted in accordance with (15) above or (17) below, install all outstanding acoustic insulation in blocks A, B, C, D and E in full accordance with the approved details;
 17. If Liverpool City Council does not approve the detailed evidence of the installation of acoustic insulation installed in blocks A, B, C, and E or the proposed acoustic insulation submitted in accordance with (15) above, then amended detailed evidence of the installation of acoustic insulation or the proposed acoustic insulation installed in blocks A, B, C, and E in accordance with (15) above shall be submitted within 21 days and there shall be continued submission of such amended schemes as may be required until such time as Liverpool City Council does approve detailed evidence of the installation of acoustic insulation installed in blocks A, B, C, and E submitted in accordance with (15) above;
 18. Any outstanding acoustic insulation approved in accordance with (15) or (17) above, shall be implemented in full accordance with the approved details within 12 months of the date this Notice takes effect;
 19. Within 21 days of the date this Notice takes effect, submit to the LPA for approval a detailed construction management plan in relation to Block D, to include:
 - (ii) hours of operation for construction work;
 - (iii) scaffoldings and hoarding lines;
 - (iv) measures to control noise and dust;
 - (v) details of site compounds, including storage of plant and materials;
 - (vi) temporary highway / utility works or closures;

- (vii) construction routes in and around the site and any measures for traffic management;
 - (viii) parking of vehicles of site operatives and visitors;
 - (ix) access for passing traffic and pedestrians;
 - (x) any public realm works;
 - (xi) wheel washing facilities; and
20. Within 7 days of the approval of the Construction Management Plan, implement all details as approved in accordance with (19) above or (21) below;
 21. If Liverpool City Council does not approve a detailed construction management plan in accordance with (19) above, then an amended detailed construction management plan shall be submitted in accordance with (19) above within 7 days and there shall be continued submission of such amended schemes as may be required until such time as Liverpool City Council does approve a detailed construction management plan submitted in accordance with (19) above; and
 22. Within 21 days of the date this Notice takes effect, submit to the LPA for approval details of bin stores for blocks A, B, C, D and E.
 23. Within 28 days of the approval of the bin stores submitted in accordance with (22) above or (24) below, implement all details as approved in relation to Blocks A, B, C and E; and
 24. If Liverpool City Council does not approve details of the bin stores in accordance with (22) above, then amended details shall be submitted in accordance with (22) above within 7 days and there shall be continued submission of such amended schemes as may be required until such time as Liverpool City Council does approve a bin store details submitted in accordance with (22) above; and
 25. Within 2 months of the date this Notice becomes effective, submit a servicing management strategy including full details of the times and frequency of deliveries and refuse collection from Fox Street and Prince Edwin Street to the LPA for approval; and
 26. Within 2 months of the approval of the servicing management strategy detailed in (25) above or (26) below, the approved servicing management strategy shall be implemented.
 27. If Liverpool City Council does not approve a servicing management strategy in accordance with (25) above, then an amended servicing management strategy in accordance with (25) above shall be submitted within 21 days and there shall be continued submission of such amended schemes as may be required until such time as Liverpool City Council does approve a servicing management strategy submitted in accordance with (25) above; and
 28. Within 21 days of the date this Notice comes into effect, submit full details of a management strategy for the safe and inclusive means of escape of all building users in the event of fire evacuation from blocks A, B, C and E; and
 29. If details submitted in accordance with (28) above or (30) below are approved, then within 21 days of the approval of the strategy submitted in accordance with (28) or (30), implement all recommendations included in the approved strategy,
 30. If Liverpool City Council does not approve the means of escape strategy submitted in accordance with (28) above, an updated strategy shall be submitted to Liverpool City Council Planning service within 21 days of the refusal to approve and such amended strategies as may be required shall continue to be submitted to Liverpool City Council until such time as Liverpool City Council does approve a detailed means of escape strategy for blocks A, B, C and E; and
 31. In the planting season following the construction of the basement car park required by (2) above, carry out the planting detailed on Proposed Landscaping Scheme rev A dated 12.12.14.
 32. Within 2 months of the date this Notice comes into effect, submit to the LPA for approval a scheme for the design and construction of a site access. The access shall be designed in accordance with the principles set out in the approved drawings and shall include pedestrian crossing points and tactile paving; and

33. Within 8 months of the approval of the details submitted in accordance with (32) above or (34) below, implement all recommendations included in the approved scheme;
 34. If Liverpool City Council does not approve the scheme for the site access submitted in accordance with (32) above, an updated scheme shall be submitted to the Council within 21 days of the refusal to approve and such amended schemes as may be required shall continue to be submitted to Liverpool City Council until such time as Liverpool City Council does approve a site access scheme in the terms required by (32) above.
- The period for compliance with the requirements relate to the activities numbered in section 5 of the Notice. In relation to Requirement 1 of the Notice, the timescale for compliance is 2 years from the date the Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Procedural Matters

1. In this case the allegation is brief in that the development of blocks of residential accommodation and commercial units, shown as blocks A, B, C, D and E on the attached plan (EN1) have not been carried out in accordance with planning permissions 14F/1767 and 15F/1640. Where a breach of conditions is alleged, details of the relevant permissions and conditions should be recited so it is clear what the allegation is. The enforcement notice to which this appeal relates does not specify the conditions which have been breached, but it does set out the precise matters which the development fails to comply with. Therefore, the omission of any recited conditions is capable of being corrected because the evidence before me indicates that the appellant is under no illusion as to the basis of the allegation.
2. I am also concerned that there are some errors in the enforcement notice, such as the repetition of requirements (Steps 9, 10 and 11 are repeated as steps 28, 29 and 30) and reference to incorrect paragraphs (for example step 10 which refers to steps 9 and 10, which should read 9 and 11). Having carefully considered these errors I conclude that they too can be corrected without causing injustice to parties.
3. The enforcement notice was issued because it appeared to the Council that there has been a breach of planning control within paragraphs (a) and (b) of section 171A(1) of the 1990 Act, which suggests to me that the allegation is one of development without the required planning permission and of a breach of condition or limitation on a planning permission. With this in mind, I have also identified that the reasons for issuing the notice specifically identify that there has been a material change of use of Block A from a business use to a mixture of residential accommodation and short-term letting accommodation. Therefore, in my view this is a separate allegation that relates to a material change of use, which would be of interest to other parties, such as local residents and businesses.
4. Section 173(11) of the Act states that where an enforcement notice could have required any activity to cease, but does not do so, and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s173A in respect of the construction of the buildings or works or the carrying out of activities. Consequently, since there is no remedy in the enforcement

notice for the material change of use, the entire development including the material change of use would benefit from planning permission should the requirements of the enforcement notice be complied with. In these circumstances I consider that there would be injustice to interested parties if the enforcement notice is upheld, varied or corrected and subsequently complied with.

Conclusion

5. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under ground (g) as set out in section 174(2) of the 1990 Act as amended does not fall to be considered.

Formal Decision

6. The enforcement notice is quashed.

A A Phillips

INSPECTOR