
Appeal Decision

Site visit made on 14 November 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 2nd February 2020

Appeal Ref: APP/U5360/C/19/3221541

Land at 86-100 Mare Street, Hackney, London E8 3SG

- 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 Simcha Green against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 3 January 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of two detached six-storey buildings in breach of Conditions 1, 2 and 3 attached to planning permission ref: APP/U5360/C/10/2142920.
 - The requirements of the notice are to:
 1. Demolish the two detached six-storey buildings to ground level.
 2. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the land and its premises.
 - The period for compliance with the requirements is Twelve (12) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. The enforcement notice is quashed.

The enforcement notice

2. The allegation in the notice is "Without planning permission, the erection of two detached six-storey buildings in breach of Conditions 1, 2 and 3 attached to planning permission ref: APP/U5360/C/10/2142920". However, there is not sufficient clarity as to the breach of planning control. The appellant cannot know fairly what he has done wrong since it could be either failure to comply with conditions on an extant permission, or that no planning permission existed as a result of that failure.
3. Further, the nature of the allegation is made uncertain and confused by contradictory elements within the notice. Paragraph 1 of the notice states that it has been issued due to a breach of planning control under paragraph (a) of Section 171A(1)¹. That provision relates to the carrying out of development without planning permission, rather than failing to comply with any condition or limitation subject to a granted planning permission (which would alternatively be enforced under paragraph (b) of Section 171A(1)). However, in contradiction, paragraph 4 of the notice refers to the alleged breach as having

¹ Town and Country Planning Act 1990 (as amended).

occurred within the last 10 years which is not the 4-year time limit provided under Section 171B(1) for operational development outside of a planning permission. It is, however, the relevant enforcement time limit for a breach of planning condition.

4. Accordingly, and for the above reasons, I find the notice invalid since when read as a whole it is unacceptably ambiguous as to the breach of planning control alleged.
5. I have considered whether it would be appropriate to use my powers under Section 176(1)(a) to correct the notice. However, to do so may deprive the appellant the opportunity of having appealed under further or alternative grounds had the allegation been clear when the notice was issued. Also, correction(s) providing clarity as to whether paragraph (a) or (b) of Section 171A(1) applies would set the associated enforcement time limit and I note that the parties have not made submissions (or in the case of the appellant, set out a ground of appeal) in that respect.
6. Therefore, as the defects are too fundamental to be corrected without causing significant injustice to the parties, the enforcement notice is quashed.

Conclusion

7. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. 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 grounds (f) and (g) as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Andrew Walker

INSPECTOR