



Appeal Decision

Site visit made on 9 March 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 March 2022

Appeal Ref: APP/U5360/C/20/3255528

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 26 June 2020.
- The breach of planning control alleged in the notice is failure to comply with condition Nos 1, 2 and 3 of a planning permission Ref APP/U5360/C/10/2142920 granted on 3 May 2012.
- The development to which the permission relates is the erection of a six storey building (comprised of two detached six-storey elements). The conditions in question are Nos 1, 2 and 3 which state that:

Condition 1 "The buildings hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 12 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

i) Within 3 months of the date of this decision a scheme for the following matters shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

1. details of the existing buildings with alterations to the western and southern elevations of the building fronting Mare Street comprising details of the residential entrance to include provision of a double width doorway; detailed drawings at a scale of 1:20 of window openings, balconies and soffits; a signage strategy for the ground floor commercial units across their Mare Street frontage; a shutter system to commercial units facing Mare Street to include a lattice (criss-cross) style of shutter; details of the ground floor level of the development including the refuse stores, secure and covered parking for 35 cycles.

2. details of materials to be used in the construction of the development.

3. details of the landscaping of the site.

ii) if within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable."

Condition 2 "The buildings hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 12 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

i) within 3 months of the date of this decision a scheme for the provision of affordable housing (as defined in Annex 2 of the National Planning Policy Framework or any replacement definition) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its

implementation. The scheme shall include: the type, tenure and location within the buildings of no less than 15 affordable units; the timing of the fit-out of the affordable units; the arrangements for the transfer of the affordable housing to an affordable housing provider; the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and the occupancy criteria to be used for determining the identity of the occupiers of the affordable housing and the means by which occupancy criteria shall be enforced.

ii) if within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable."

Condition 3: "The buildings hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 12 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

i) within 3 months of the date of this decision a scheme to ensure that, with the exception of disabled persons (that is holders of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970), no current or future resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force in the borough at any time shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) if within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable."

- The notice alleges that the conditions have not been complied with in that:
Condition 1: Two schemes were approved by the Local Planning Authority however the timetable for their implementation was not followed. The buildings were to be demolished to ground level and all materials resulting from the demolition removed within 12 months of failure to be carried out and completed in accordance with the approved timetable. As this has not been achieved, it appears to the Local Planning Authority that the condition has not been complied with.
Condition 2: No scheme has been submitted to the Local Planning Authority within 3 months of the date of decision (3rd May 2012) and the buildings have not been demolished to ground level and all materials resulting from the demolition removed in the following 12 months succeeding the failure to submit an affordable housing scheme. As a result, it appears to the Local Planning Authority that the condition has not been complied with.
Condition 3: No scheme has been submitted to the Local Planning Authority within 3 months of the date of decision (3rd May 2012) and the buildings have not been demolished to ground level and all materials resulting from the demolition removed in the following 12 months succeeding the failure to submit a (with exception of disabled persons) car free development scheme. As a result, it appears to the Local Planning Authority that the condition has not been complied with.
- The requirements of the notice are:
 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)(c), (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.

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

Preliminary Matter

1. Alleged breaches 1, 2 and 3 as set out in paragraph 3 of the Notice refer to planning permission granted under Ref: APP/U5360/C/10/214292 whereas Ref: APP/U5360/C/10/2142920 as correctly referred to elsewhere in the Notice should have been identified. This error has not been raised by the main parties and therefore it can be corrected without causing any injustice.

Application for costs

2. An application for costs was made by London Borough of Hackney against Mr Sincha Green. This application is the subject of a separate Decision.

Background and the Appeal Site

3. On 3 May 2012 planning permission was granted on appeal for the erection of two six storey buildings subject to conditions. Condition 1 relates to the submission of various details of the existing buildings and although two schemes were approved by the Council the timetable for their implementation was not followed. Consequently, in accordance with the requirements of the condition, the buildings were to be demolished to ground floor level and all materials removed within 12 months of such failure.
4. Condition 2 relates to the provision of affordable housing and no scheme was submitted within the required timetable and the buildings have not subsequently been demolished to ground floor level and all materials removed from the site. Therefore, it appears to the Council that a breach has occurred.
5. Finally, condition 3 relates to the provision of car free housing. Since the timetable specified in the condition has not been adhered to and the buildings have not been demolished and all materials removed, it appears to the Council that a breach has occurred.
6. The appeal site now contains two six-storey buildings; one of which is located to the eastern end of the site and includes residential flats only and the other one fronts onto Mare Street with unoccupied ground floor units with residential flats above.

The appeal on ground (c)

7. The ground of appeal is that there has not been a breach of planning control. The appellant contends that there is permission in place for the development and that the right course of action is a breach of condition notice. It is clear to me that the enforcement notice served is a breach of condition notice served pursuant to Section 171A(1)(b) of the Act.
8. Therefore, the main issue to be determined under ground (c) is whether the alleged breach of planning control as set out in the Notice has occurred. It is my understanding from the evidence before me that the development approved under reference APP/U5360/C/10/2142920 was implemented and therefore

was immediately the subject of conditions from 3 May 2012. Since there have been no applications to vary or remove the conditions, they remained in effect and were enforceable at the time the Notice was served. Consequently, failure to demolish the buildings and remove all materials resulting from the demolition from the site constitute a breach of planning control.

9. Therefore, the appeal on ground (c) does not succeed.

The appeal on ground (f)

10. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purpose of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the demolition of the two detached six-storey buildings to ground level and the removal of materials, debris, waste and equipment from the land, the purpose is to remedy the breach. Any measures short of those specified in the notice would not achieve that purpose.
11. The appellant contends that applications have been submitted to discharge the conditions and therefore the requirements of the Notice are excessive. Instead, he argues that the Notice should require adherence to conditions attached to the 2012 planning permission.
12. Since there is no ground (a) under which planning merits may be considered, and the purpose of the Notice is to remedy the breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f). The 1990 Act cannot be interpreted as allowing a submission that the requirements exceed what is necessary to remedy any injury to amenity where, as in this case, the purpose of the requirements is to be found wholly within s173(4)(a). Consequently, even though the appellant has submitted applications to discharge conditions imposed on the 2012 consent, the appeal on ground (f) cannot succeed.

The appeal on ground (g)

13. The ground of appeal is that the time given to comply with the requirements is too short. The twelve months given reflects the compliance periods given in conditions 1, 2 and 3 of APP/U5360/C/10/2142920. Those were set by the Inspector knowing that the buildings were already occupied. The eighteen month compliance period suggested by the appellant would be excessive having regard to the ongoing breaches of planning control. Nearly ten years has passed since the development was conditionally approved and it is my understanding that at least six years have passed since the Council requested that the buildings be demolished.
14. Although the buildings are occupied by families, the twelve months originally given by the Inspector seems to have been accepted back in 2012 and given the wider public interest to prevent any further harm caused by the development the twelve month period is reasonable, realistic and necessary. The appellant has identified the pandemic as a reason to extend the time period for compliance, but in this case, there is insufficient clear evidence that justifies an extension to the period specified in the Notice and therefore the appeal on ground (g) fails. However, should such evidence be presented to the Council in the future, the time frame specified could be reviewed.

Formal Decision

15. I direct that the enforcement notice shall be corrected by the deletion from paragraph 3 of all references to "APP/U5360/C/10/214292" and the substitution therefore of "APP/U5360/C/10/2142920".
16. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR