



Appeal Decisions

Site visit made on 29 July 2021

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2022

Appeal A: APP/U5360/C/20/3256384

Appeal B: APP/U5360/C/20/3256385

Land at 17 Manor Road, Hackney, London N16 5BQ

- Appeals A and B are made by Messrs the Directors of Yeshiva Gedolah Torah Veyirah Ltd and Messrs Wiseheights Ltd respectively.
- The appeals are made under section 174 of the Town and Country Planning Act 1990 against an enforcement notice issued by the Council of the London Borough of Hackney on 26 June 2020.
- The breach of planning control alleged in the notice is a failure to comply with condition 1) imposed on planning permission (ref: APP/U5360/C/14/2223622) which was granted on appeal on 28 April 2015.
- The development to which the permission relates is 'the erection of four single storey portacabins [sic] structures'.
- Condition 1) states that: 'The permission shall be for a limited period, being the period of 3 years from the date of this decision. At the end of this period the portacabins hereby permitted shall be removed and the land restored to its former condition before the development took place or in accordance with a scheme to be submitted to and agreed by the local planning authority before the due date.'
- The notice alleges that the condition has not been complied with because 'the buildings have been retained instead of removed and the land has not been restored to its former condition following the date of 28 April 2018'.
- The requirements of the notice are to:
 1. Remove the four (4) single storey portacabins from the Property;
 2. Restore the land to its former condition prior to the erection of the 4 single storey portacabins;
 3. 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 three (3) months.
- Appeal A is proceeding on the grounds set out under section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990. Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.
- Appeal B is proceeding on the grounds set out under section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990.

Summary of Decisions: Appeal A is allowed, the enforcement notice is corrected and quashed and planning permission is granted in the terms set out below in the Formal Decision.

PRELIMINARY MATTERS

The Site and its Planning History

1. The appeals concern a relatively large previously-developed urban site which is mostly hard-surfaced and bound by high fences. Nearby buildings on Manor Road are typically in residential or mixed use, while land to the rear of the site is used as a cemetery.

2. I understand that the appeal site was once used by the Council for offices and/or a maintenance depot. The next known use of the land was as a depot for a cleaning company. In 2007, planning permission (ref: 2007/0273) was granted by the Council for, in short, the erection of a primary school for 2300 pupils. There is no dispute that the school was never built and the '2007 permission' was never implemented.
3. On 11 July 2014, the Council issued an enforcement notice (2013/0819/ENF) which alleged that there had been a breach of planning control consisting of 'the unauthorised erection of four single storey portacabin structures...to facilitate the material change of use as a school...' at the site.
4. The Directors of Yeshiva Gedolah Torah Veyirah Ltd, now 'Appellant A', appealed against the '2014 notice'¹. The '2015 decision letter' was issued on 28 April 2015 following a hearing. The 'previous Inspector' decided to correct and quash the notice and grant planning permission². The '2015 permission' was granted subject to four conditions. As set out in the banner header, condition 1) served to limit the permission to a period of three years.
5. On 23 November 2018, the Council issued another enforcement notice in respect of the site. It was appealed but then withdrawn. Since I have not seen a copy of the '2018 notice', I make no assumptions about its contents. I cannot, however, exclude the possibility that it purported to enforce against the same breach of planning control as the current or 2020 notice.
6. The current notice alleges that there has been a breach of planning control as described under s171A(1)(b) of the Town and Country Planning Act 1990 (TCPA90), namely a failure to comply with a condition subject to which planning permission was granted. It is alleged that there has been a failure to comply with condition 1) on the 2015 permission because the portacabins were not removed at the end of the three year period.
7. The 2020 notice misdescribes the 2015 permission. The previous Inspector corrected the 2014 notice so as to delete references to a material change of use, because the Council did not object to the use of the site for educational purposes. The notice as corrected simply alleged 'the erection of four single storey portacabins [sic] structures' and that is what was permitted.
8. I shall correct the 2020 notice to describe the 2015 permission precisely – and by appending a helpful 'site survey' plan, provided by the appellants, which plots the four portacabins within the site. The corrections will make the notice clearer and not cause injustice to the appellant or Council.
9. While the 2015 permission was strictly for operational development, the portacabins and site were then and are still used as a yeshiva or Talmudical college. At the time of the 2015 permission, the Yeshiva had approximately 100 students aged between 16 and 20.

Application for Costs

10. The Council has applied for a partial award of costs against the appellants. That application is subject to a separate decision.

¹ Appeal ref: APP/U5360/C/14/2223622

² Under s176(1)(a) of the Town and Country Planning Act 1990, an Inspector may correct any error, defect or misdescription in an enforcement notice so long as doing so will not cause injustice to the appellant or Council.

APPEALS A AND B ON GROUNDS (C) AND (D)

The 'Matters Stated in the Notice' and Grounds (c) and (d)

11. Grounds (c) and (d) are 'legal' grounds of appeal where the onus is on the appellants to make their case on the balance of probabilities. Their evidence should be accepted if it is precise and unambiguous enough, and there is no evidence to contradict their version of events or make it less than probable.
12. Ground (c), as defined under s174(2)(c) of the TCPA90, is that the matters stated in the notice 'do not constitute a breach of planning control'. Ground (d) is that 'at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters'.
13. The appellants say in relation to ground (c) that 'Cabin 1' shown on the site survey plan must have been granted [permanent] planning permission before 2015. They state for ground (d) that it was too late for the Council to take enforcement action against all four portacabins or at least Cabin 1. I can understand why the appellants thought it appropriate to make those arguments through grounds (c) and (d).
14. However, the 'matters stated in the notice' means what is alleged by the notice. As the Council pointed out, the allegation now is not 'the erection of portacabins' but a failure to comply with condition 1) imposed on the 2015 permission. The appellants have misunderstood how to appeal the current notice and that makes (d) an untenable ground. The appellants do not dispute that four portacabins remain on the site at odds with condition 1) and they do not claim that the breach of condition 1) is immune from enforcement action due to the passage of time.
15. However, it does not follow that the appellants' substantive arguments for (c) or (d) can be ignored. Where the matter stated in the notice is a breach of condition, a case can be made on ground (c) that there has not been a breach of planning control because the condition was invalid. That may be so if the condition fails the legal tests for conditions, or if the permission itself was not implemented or required, so that the condition cannot be enforced³.
16. The appellants' submissions raise questions, which fall to be considered through ground (c), as to the effect of the 2015 permission and condition 1). I can determine Appeals A and B on this basis because the Council had opportunities to respond in their statement of case and final comments to the appellants' substantive points.

Was the 2015 Permission Implemented?

17. Under s171B(1) of the TCPA90, where there has been a breach of planning control consisting in the carrying out of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The appellants suggest that the four portacabins were substantially completed by

³ The legal (as opposed to policy) tests for conditions were laid down by the House of Lords in *Newbury DC v SSE* [1980] 2 WLR 379 and are that conditions must be imposed only for a planning purpose, must be fairly and reasonably related to the development permitted, and must not be so unreasonable that no reasonable authority would have imposed them.

2014 and have been on the land ever since, and the 2014 notice is not in force against them because it was quashed by the previous Inspector.

18. Thus, the appellants claim that, when the current notice was issued on 26 June 2020, it was too late for the Council to take enforcement action against the portacabins under the 'four year rule'. As indicated above, that argument could not succeed as a ground (d) appeal against the current notice because it is not concerned with the erection of portacabins.
19. To explain that point further, an enforcement notice must be quashed when planning permission is granted for the whole development alleged, because those matters are then lawful and not capable of being enforced against. When permission was granted on 28 April 2015, the 'four year' clock stopped ticking for the purposes of s171B(1)(a) and a new chapter started in the planning history of the site. The erection of the portacabins was authorised and only some new breach of planning control, such as non-compliance with a condition, could now be enforced against.
20. However, the four year clock would have continued to run after 28 April 2015 if the permission was not 'implemented' in accordance with its terms and conditions⁴. When granted retrospectively, as in 2015, planning permission is normally implemented because the whole point of the exercise was to 'regularise' what is there. However, it was not right for the Council to assume, that they seemed to do, that the 2015 permission was implemented simply 'on the basis' that it had been granted after the works took place.
21. Any planning permission, even one granted retrospectively, may not be implemented if there is a subsequent departure from any approved plan or breach of condition which goes to the heart of the permission. That said, the onus is on the appellants to show that the 2015 permission was not implemented, on the balance of probabilities, and they have not made that case. There is no suggestion or evidence that any failure to comply with conditions 2), 3) or 4) meant that the erection of the portacabins could be deemed 'without planning permission'⁵.
22. Thus, the appellants have not shown that condition 1) is invalid on the basis of the 2015 permission not being implemented. I find, on the balance of probabilities, that the erection of four portacabins could not have acquired immunity under the four year rule since the operations gained the benefit of planning permission. However, the grant and implementation of the 2015 permission did not prevent the Council from taking enforcement action against any new breach of planning control and that probably occurred when the four portacabins were not removed as required by condition 1).

Cabin 1 and the 2015 Permission

23. As indicated above, a notice concerned with a breach of condition may be appealed on ground (c) on the basis that the permission was not required in the first place, so that the landowner is not precluded from relying on pre-existing rights and the condition in question cannot 'bite'. This is known as

⁴ The term 'implementation' is not defined in statute or case law. I use the phrase to denote whether what was on site following the grant of the 2015 permission accorded with the terms and conditions of the permission.

⁵ Condition 2) controlled when windows in the portacabins could be open, condition 3) required the submission, approval and implementation of an external lighting scheme for the site and condition 4) prohibited the use of equipment for amplifying sound in the portacabins. It seems that the Council considered or began enforcement action against a failure to comply with condition 2) but that was remedied so that there was no breach.

the '*Newbury* principle' and the appellants have – essentially though not in terms – sought to apply it to 'Cabin 1'⁶.

24. Cabin 1 is shown on the site survey plan as the portacabin closest to the Manor Road end of the site. Put simply, the appellants claim that Cabin 1 has been on the site since 1999. They say it must have been placed there by the Council for their own use and with the benefit of planning permission; if that is not correct, Cabin 1 would have become immune from enforcement action under the four year rule before the 2014 notice was issued. In *Newbury* terms, the case is that the 2015 permission was not needed for Cabin 1 because it was already lawful and it cannot be bound by condition 1).
25. However, there is no evidence of permission being granted for a portacabin pursuant to any planning application or enforcement appeal prior to the 2014/2015 proceedings. The appellants have not shown that, at any time between 1999 and 2014, there might have been a 'permitted development' right to install a portacabin on the site⁷. On the balance of probabilities, none of the cabins were brought to the land with planning permission.
26. In terms of immunity, the previous Inspector recorded that one of the four cabins, although since partly re-clad, was one that had been 'originally' on the site⁸. Aerial photographs taken in 1999, 2002, 2008, 2013 and 2016 all seem to show the same grey-roofed portacabin in the position of Cabin 1⁹. However, I shall not make any formal determination as to whether Cabin 1 was substantially completed more than four years before the 2014 notice was served because the appellants have not shown that the *Newbury* principle can in fact be applied.
27. In *Newbury* itself, the planning permission later found to be unnecessary was granted in the first place on application to the local planning authority (LPA). Where a planning application is made, the LPA has no remit to decide the lawfulness of what is proposed; they can only decide whether or not to grant permission given the merits of the development. The 'necessity' question in *Newbury* arose when enforcement proceedings began.
28. Here, however, the 2015 permission was itself granted through enforcement proceedings, specifically via a deemed planning application arising from an appeal on ground (a) against the 2014 notice. As the Council points out, that enforcement appeal could have also been but was not made on grounds (c) or (d). To be clear, the 2014 notice alleged the erection of four portacabins and the appeal against that notice was Appellant A's opportunity to ask the question as to whether any portacabin was already lawful.
29. Under s285 of the TCPA90, the validity of an enforcement notice shall not, except by way of an appeal under Part VII of the TCPA90, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. I regret that Appellant A felt unable to appeal the 2014 notice on legal grounds but s285 does not permit discretion. Since grounds (c) and (d) were not pleaded in 2014, the appellants cannot now question whether any portacabin subject to the 2014 notice was then in breach of planning control or immune from enforcement action.

⁶ *Newbury DC v SSE* [1980] 2 WLR 379

⁷ Meaning that planning permission was granted by a development order.

⁸ Cabins 2, 3 and 4 were brought to the site later as replacements for other 'original' portacabins.

⁹ Appendices 3 and 7 to the appellants' statement of case.

30. I also find that the 2014 appeal was Appellant A's opportunity to separate Cabin 1 from the other three. If they had then pleaded ground (c) or (d) and the previous Inspector had found that Cabin 1 alone was lawful, she would have corrected the 2014 notice to simply allege the erection of Cabins 2-4. In her actual decision letter, she noted differences between the re-clad original and the three newer cabins but she made no reference to any request or evidence in favour of a 'split decision' on ground (a). All four portacabins were permitted on the same basis together.
31. In other words, the 2015 permission – which was implemented – was for the erection of four portacabins as a single act of development. That is important because, even if s285 did not prevent me from applying the *Newbury* principle, the appellants have not shown that the 2015 permission was unnecessary as a whole or how it could now be disaggregated. They have not explained how Cabin 1 could be excluded from the 2015 permission or condition 1) could be found ineffective against Cabin 1 but not Cabins 2-4.

Conclusion on Grounds (c) and (d)

32. The Council stated that the 2015 permission 'supersedes any previous... immunity period'. In cases like this, I would caution against making such assumptions without considering first whether the permission was implemented or required on the facts.
33. However, the appellants have not demonstrated that the 2015 permission was not implemented. On the balance of probabilities, the four year clock stopped ticking on 28 April 2015 and the erection of four portacabins did not become immune from enforcement action during the period thereafter when they were on the site with the benefit of the 2015 permission.
34. The appellants have also not shown that the 2015 permission was unnecessary, whether in respect of all portacabins or just Cabin 1. I can make no such determination because s285 of the TCPA90 prevents the appellants from making any argument that could and should have been raised through a ground (c) or (d) appeal against the 2014 notice. Moreover, the 2015 permission cannot now be disaggregated so as to exclude Cabin 1.
35. Thus, the appellants have not shown that condition 1) is invalid in respect of all four portacabins or Cabin 1 alone. I conclude that, on the balance of probabilities, the alleged breach of condition 1) does constitute a breach of planning control. Appeals A and B fail on ground (c).
36. I note for the avoidance of doubt that, under s171B(3) of the TCPA90, no enforcement action may be taken in respect of a failure to comply with a 'temporary' condition after the end of the period of ten years beginning with the date of the breach. Under s171B(4)(b), LPAs are not prevented from taking further enforcement action if they had taken or purported to take action in respect of the same breach within the preceding four year period.
37. Condition 1) required the removal of the portacabins and restoration of the site by the end of the period of three years from 28 April 2015. The failure to comply with condition 1) began on 29 April 2018 and the Council therefore had until 29 April 2021 to take enforcement action against the breach. Whether they first (purported to) act through the current or 2018 notice, they were not too late. Appeals A and B also fail on ground (d).

APPEAL A ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

Planning Policy

38. The current notice refers to policies in the Hackney Local Development Framework Core Strategy 2010 and Hackney Development Management Local Plan 2015. By the time that the Council submitted their statement of case, the Hackney Local Plan 2033 (HLP) had been adopted and it supersedes the previous plans.
39. The notice also refers to the London Plan 2016 but that has been replaced by the London Plan 2021. Likewise, the National Planning Policy Framework (the Framework) was revised after the notice was issued. I shall properly consider ground (a) on the basis of up-to-date local and national planning policies which the appellant and Council have had opportunities to consider.
40. HLP Policy LP24 concerns loss of housing and is not, in my view, relevant to this ground (a) appeal. The same applies to London Plan Policies D1 and D4, which appear to concern design considerations for local plan policies and/or masterplans for major developments.

Main Issues

41. Where an enforcement notice alleges that there has been a breach of condition, ground (a) is pleaded where the appellants seek to carry out the development subject to the original planning permission without complying with the condition being enforced against. Thus, the question before me now is whether to grant planning permission anew for the erection of four single storey portacabins.
42. The main issues are the effect of the portacabins on the character and appearance of the site and surrounding area; the benefits of the use of the portacabins as the Yeshiva; and progress on the provision of an alternative site or building for the Yeshiva.

Reasons

Character and Appearance

43. The current notice set out one reason why the Council sought to enforce against the breach of condition 1), namely that the design and 'utilitarian appearance [of the portacabins] contrasts unfavourably with the permanent development nearby and detracts from the surroundings.' That phrase is lifted from the 2015 appeal decision and, while the previous Inspector may there have been referring in particular to Cabins 2-4, I agree with the Council that the same is true of them all.
44. I saw that the portacabins are large, boxy and covered in materials such as asphalt and UPVC which are not durable, attractive or in keeping with the bricks from which most nearby properties are built. The cabins also differ from nearby buildings in terms of height, shape and layout. I appreciate that any new development on the site would be unlikely to exactly match, for example, nearby terraced houses. I also note that there are no heritage assets in or around the site. Even so, I find the portacabins harmful to the character and appearance of the area because they are devoid of any architectural merit or respect for the townscape.

45. The appellants accept that the portacabins are utilitarian and temporary in nature but nonetheless suggest there is no 'deleterious' impact partly because the site is well-screened. Local residents who have written in support of the appeals make the same point¹⁰. However, as the Council and previous Inspector noted, the portacabins can be seen from 'private viewpoints', namely upper floor windows in adjacent buildings.
46. I saw that the portacabins are also visible to passing members of the public when the site gates are open, and how often that is the case could not be controlled by condition. From Manor Road as within the site, the portacabins appear bulky, unsightly and depressing in views. Moreover, because the portacabins are low and set back behind a high fence, the site has a forbidding appearance within the street whether the gates are open or not.
47. The appellants and their supporters also suggest that the portacabins cause no unacceptable harm because they have been on the site for so long. The previous Inspector granted temporary permission in part because 'there have been cabins of some description on the land for many years' and 'the replacement of [Cabins 2-4] has not resulted in any significant additional harm to the overall appearance of the site...'
48. Clearly, the portacabins have now been here for even longer, but that fact in my view should not now assist the appellants. By contrast, it means that the portacabins have caused protracted harm to the character and appearance of the area. Adding weight to that that assessment, the portacabins are temporary by design and built of relatively flimsy materials. They are likely to weather badly and become shabbier each year.
49. The appellants implied in relation to ground (f) that, because Cabins 2-4 were replacements for older portacabins, upholding the notice and requiring restoration of the site might not result in the land actually being cleared. For the avoidance of doubt, there is no fallback position in which any portacabin could be brought back to the site. Such works would be liable to involve new building operations and require planning permission.
50. However, it follows that the site might be left unoccupied if the notice is upheld. I have some sympathy with the point raised by a local resident that 'at least the site is now used'. They suggest that the site was derelict and squatted in the past and might become so again if left empty¹¹. I cannot say that is unlikely because the Council has not set out any counter view as to what might happen if I refuse planning permission. Unsightly as the portacabins are, I consider that the character and appearance of the area would not be much improved in the short-term by the site being left vacant.
51. For somewhat different reasons, therefore, I reach the same conclusion as the previous Inspector, namely that 'it would not necessarily now be disproportionate to allow [the portacabins] to remain for a limited period' but a grant of permanent or long-term planning permission would result in unacceptable harm to the character and appearance of the site and surrounding area in conflict with:

¹⁰ With no evidence to suggest otherwise, I assume that every letter was genuinely sent, whether or not there are commonalities in substance, wording, format or any other respect.

¹¹ Other local residents have also stressed that there is no antisocial behaviour on the site at present, although that could be their response to the Council's concerns about the effect of the portacabins (or college use) on the living conditions of nearby occupiers.

- HLP Policy LP1, which expects that all new development is of the highest architectural and urban design quality; responds to local character and context; is compatible with the existing townscape and local views; improves the public realm and frontage to the street; and uses attractive, durable high quality materials which complement local character.
- London Plan Policy D3, which requires that all development enhances local context by delivering buildings which positively respond to local distinctiveness through their layout and appearance; and is of high quality in architectural detail and use of attractive and robust materials.
- The Framework, which expects that developments add to the overall quality of the area; are visually attractive as a result of good architecture and layout; are sympathetic to local character and the surrounding built environment; and establish or maintain a strong sense of place.

Benefits of the Portacabins

52. The other reason why the previous Inspector granted temporary permission was because of 'the need for the community to have premises in which they can site this *Yeshiva* and the difficulties they have encountered in finding suitable accommodation'. Before I look at the accommodation issue, I accept the evidence of the appellants and local residents that there is a need for a yeshiva in this area and local young adults benefit from attending it.
53. The appellants suggest that sites for educational uses are in short supply in this area but they do not provide much supporting evidence or describe the extent of the need for local yeshivas specifically¹². I regret that both parties referred to but did not provide a copy of the (emerging) Stamford Hill Area Action Plan (SHAAP), which might have shed some light on that matter. However, the Council does not comment on or thus dispute the need for or benefits of having a yeshiva in this area.
54. HLP Policy LP8 states that the Council will plan in partnership with service providers for education and community facilities. The Framework expects LPAs to take a positive, proactive and collaborative approach to development that will widen choice in education, give great weight to the need to create schools and ensure faster delivery of public service infrastructure such as further education colleges. While I make no comment on whether use as a yeshiva is acceptable on this site, I attach great weight to the fact that the portacabins accommodate a locally-beneficial educational establishment.

The Provision of Alternative Accommodation

55. The previous Inspector noted that Appellant A intended 'to replace the portacabins with permanent buildings, once funding is available, so that the college will have a secure home'. She found that allowing the portacabins to remain for three years would suffice for Appellant A to make arrangements but allowing 'a longer period would not instil the sense of urgency needed to drive the project forward and deliver a satisfactory scheme'.
56. On 26 May 2017, the appellants acquired another site in a different LPA area. It includes a former court building which requires 'almost no

¹² I cannot comment on and do not even know the outcome of the other enforcement appeals (3253676 and 3249402) which were mentioned by the appellants and apparently relate to educational uses in Hackney.

construction or adaptation' to be put to educational use¹³. I am satisfied that the appellants did not ignore the previous Inspector's 'urgency' comment. They acted to secure an alternative site for the Yeshiva before the three year period ended and the breach of condition 1) began on 29 April 2018.

57. However, the appellants found that the owners and occupiers of an adjacent building have a right of way over the court site. They say that they cannot relocate the Yeshiva until the right of way is extinguished. By December 2018, negotiations over the access had stalled and the appellants expected to need at least another three years to move into or sell the court building¹⁴.
58. Unfortunately, the appellants gave no real update in their representations for these appeals as to whether the access issue is resolved or the court site has been sold. Indeed, they **still** say that they need at least three years to move forward¹⁵. I am surprised that the issue of the current notice in June 2020 did not focus their minds, and they did not explain what steps they have taken since December 2018 and why those steps did not result in progress.
59. The appellants have also not explained why they need other premises at all. As noted above, their plan in 2015 was to redevelop the appeal site which, without prejudice to any future application, seems capable in principle of accommodating a yeshiva. I understand that the college would need a temporary home while any permanent building is under construction but it does not follow that the appeal site must be the provisional one. The portacabins are, after all, moveable as well as there in breach of condition.
60. Moreover, and as the previous Inspector indicated, the process of obtaining planning permission for a permanent Yeshiva could begin before the question arises of where the students would go during the construction period. Yet there is no evidence of the appellants seeking to discuss with the Council what a mutually acceptable Yeshiva might look like. I realise that their funds are now tied up in the court building but that does not explain why they made no investigation of alternatives before they bought that property or since December 2018.
61. Unfortunately, there is also little from the Council to suggest that they have taken the positive, pro-active and collaborative approach encouraged by the Framework. The correspondence I have seen between the parties was dispiriting on both sides. In representations for these appeals, the Council made no mention of any efforts on their part to secure redevelopment of this not insignificant site and/or to assist the appellants in moving elsewhere.
62. I appreciate that the Council has been trying to remove the portacabins from the site for years because of the harm that (I agree) those structures cause. I also understand that the merits of the use of the site are not before me and the court building is in another borough. However, the portacabins are plainly still on the land because they still accommodate the Yeshiva and so finding another home for the college is an unavoidable problem.

¹³ Since there is no evidence to the contrary, I shall assume that planning permission would not be required for the change of use of the court building. The use of land or a building for the provision of education and as a law court fell within the same use class (D1) in 2017 and still does now although the Town and Country Planning (Use Classes) Order 1987 was amended in 2020 and the use class in question is now F.1.

¹⁴ As explained in the appeal against the withdrawn 2018 notice.

¹⁵ Albeit in their submissions for ground (g)

63. Whether the appellants or Council are more to blame for the impasse is a moot question; I am concerned with how things stand now. In short, the appellants purchased another site in May 2017 but that is now deemed unsuitable. No progress has been made since December 2018 in the provision of an alternative site or building for the Yeshiva while, as noted above, I am told of no plans for any other development on the appeal site.

Conclusion and the Public Sector Equality Duty

64. I have found that the portacabins cause unacceptable harm to the character and appearance of the site and surrounding area, in conflict with HLP Policy LP1, London Plan Policy D3 and the Framework. However, there is a risk of the site being left vacant if the portacabins are removed, and yet they are put to a locally beneficial educational use for which there is no suitable alternative accommodation.
65. I find that the harm caused by the portacabins is serious enough to outweigh all benefits of their retention and preclude not only a grant of permanent planning permission, but also a permission that it is 'personal' to Appellant A. Allowing the portacabins to remain while needed by the Yeshiva, such that they would only need to be removed within three months of being vacated, would in my view discourage the appellants from making any efforts to relocate the college or improve the site. It would be likely to result in harm to character and appearance of the area for an unduly protracted period.
66. However, and like the previous Inspector, I am satisfied that the planning balance points to a grant of a short temporary permission. I realise that the portacabins have now been there for longer than she permitted in 2015, but I have to make a decision that is reasonable and proportionate today. There are two clear imperatives to allowing the portacabins to remain for another short period: to seek long-term improvements to the site and, whether here or elsewhere, a permanent home for the Yeshiva.
67. Adding weight to that conclusion, the Council originally objected the portacabins on grounds that they cause harm to the living conditions of nearby occupiers. The previous Inspector found that no such harm would arise so long as the structures are subject to what became conditions 2), 3) and 4) on the 2015 permission. As set out below, I would re-impose those conditions. It follows that the portacabins should be permitted subject to restrictions as opposed to being allowed to remain unconditionally for an extended period for compliance with the notice.
68. The Government's Planning Practice Guidance (PPG) advises that a grant of temporary permission may be appropriate where it is expected that the planning circumstances might change in a particular way at the end of the period, or to enable the temporary use of vacant land prior to any longer-term proposals coming forward¹⁶. The latter situation certainly applies and a grant of temporary permission would make it less likely that the site is left vacant while the Yeshiva is simultaneously homeless.
69. The PPG also states that 'it will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school

¹⁶ PPG paragraph ref ID: 21a-014-20140306

facilities)'. There is such a rationale in this case because the portacabins are still used for educational purposes and it cannot be said that the appellants have done nothing since the temporary permission was granted in 2015.

70. The PPG further states that there is no presumption that a temporary grant of planning permission will then be granted permanently. I would caution the appellants and reassure the Council that this is the second time permanent permission is being refused for the portacabins. My decision to allow them to remain for a further short period is to give the appellants a reasonable opportunity to work up sustainable plans and put those to the Council for positive discussions. My decision should not be interpreted as endorsing the retention of the portacabins beyond that period.
71. The Council has suggested that any new planning permission should be for a limited period of one year only. With the best will on all sides, I am not confident that acceptable and achievable plans could be put in place for the Yeshiva and/or the site within that time. Equally, however, I consider that the appellants' suggested period of three years is longer than they should need, from where they are now, to plan their future. And I am concerned that giving them the same amount of time as the previous Inspector would encourage complacency. She was right that there is urgency. It is necessary and reasonable, in my view, to grant temporary permission for two years.
72. Since this case is concerned with the structures which house a yeshiva, I shall take the appellants and users of the portacabins as having the protected characteristics of religion for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010. Granting temporary permission will protect the character and appearance of the area in posterity while eliminating discrimination against and advancing equality of opportunity for the appellants and college students, so as to foster good relations between them and people of different religions and beliefs. It is the necessary and proportionate decision.
73. For these reasons, and with regard to all other matters raised, I conclude that Appeal A should succeed on ground (a) and the enforcement notice should be quashed. I shall grant planning permission on the application deemed to have been made for the portacabins previously permitted without complying with condition 1) but subject to a new two year temporary condition and the other conditions described below. Appeals A and B do not now fall to be considered on grounds (f) or (g).

Conditions

74. Conditions 2) and 3) imposed on the 2015 permission required that all portacabin windows are kept shut between the hours of 2000 and 0700; and that a scheme for the external lighting of the site is submitted and implemented as approved. The appellants suggest that those conditions have already been complied with but that does not make them redundant. Since I am granting permission anew, I agree with the previous Inspector that conditions 2) and 3) are necessary and reasonable to ensure that nearby residents do not experience unacceptable noise or light pollution and there is compliance with HLP Policy LP2.
75. Condition 4) prohibited the use of any equipment for amplifying sound. The appellants suggest that the condition should instead limit noise being

emitted from the portacabins to a maximum decibel level, but they have not said what that limit should be. I find that condition 4) is necessary and reasonable to protect nearby occupiers from unacceptable noise, and it is worded to properly enable both compliance and enforcement.

76. The Council has not suggested that any other conditions would now be required and I find that none are necessary.

FORMAL DECISIONS

77. It is directed that the enforcement notice is corrected by:

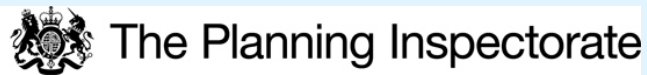
- Deleting the word 'plan.' in paragraph 2 and substituting 'location plan dated 22 June 2020'.
- Deleting the first sub-paragraph of section 3 and substituting: 'On 28 April 2015, planning permission (ref: APP/U5360/C/14/2223622) was granted subject to conditions for the "erection of four single storey portacabins structures" as shown on the attached site survey plan. Condition 1) states:'
- Attaching to the notice the 'site survey plan' annexed to this decision.

78. Subject to the corrections, Appeal A is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under s177(5) of the TCPA90 for the erection of four single storey portacabins structures without complying with the said condition 1) but subject to the conditions 2), 3) and 4) attached to the planning permission (ref: APP/U5360/C/14/2223622) and the following new condition:

- 1) The permission shall be for a limited period, being the period of two (2) years from the date of this decision. The four single storey portacabin structures hereby permitted shall be on the land for that limited two (2) year period only. At the end of that period, the four portacabins shall all be removed and the land shall be restored either to the condition it was in before the development took place or in accordance with a scheme of work that has first been submitted to and approved in writing by the local planning authority.

Jean Russell

INSPECTOR



Plan

This is the 'site survey' plan referred to in my decision dated: 23rd December 2022
by Jean Russell MA MRTPI

Appeals A and B: APP/U5360/C/20/3256384 and 3256385

Land at 17 Manor Road, Hackney, London, N16 5BQ

NOT TO SCALE

