



Appeal Decisions

Site visit made on 7 March 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 13 March 2023

Appeal A - APP/A4710/C/22/3303440

Appeal B - APP/A4710/C/22/3303441 (Lapsed)

One Park Road, Halifax HX1 2TU

- The appeals were made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals were made by Mrs Aoife Greaney (Appeal A) and Mr Andre J Nel (Appeal B). against an enforcement notice issued by Calderdale Metropolitan Borough Council.
- The enforcement notice Ref 18/60086/ENF was issued on 29 June 2022.

- **The Allegation**

The breaches of planning control as alleged in the notice relate to the non-compliance with conditions attached to Planning Permission (PP) References 18/00400/FUL, dated 4 July 2018, and 19/01313/FUL dated 28 February 2020. Breaches 1 and 2 relate to conditions 2 and 3 of PP Ref 18/00400/FUL and Breach 3 to PP Ref 19/01313/FUL.

Breach 1. Non-compliance with condition No 3 of PP 18/00400/FUL which stated:

'Notwithstanding the details submitted, all windows to the north elevation of the development hereby permitted shall be non-opening, acoustic double glazed, and glazed in obscure glass, which shall be level 5 obscurity. These shall be installed prior to the first use of the development and shall be so retained thereafter'.

This condition has not been complied with because the windows within the mansard roof at third floor level to the north elevation of the development are not non-opening and are not glazed in obscure glass at level 5 obscurity.

Breach 2. Non-compliance with condition No 2 of PP 18/00400/FUL which stated:

'Before any windows are installed details of the materials, treatment, colour and finish of the windows which shall be acoustic double glazed shall be submitted to the Local Planning Authority. The windows shall then be installed in accordance with the approved details and so retained thereafter'.

This condition has not been complied with because the windows within the mansard roof at third floor level to the north elevation of the development have not been installed in accordance with the approved details.

Breach 3. Non-compliance with condition No 2 of PP 19/01313/FUL which stated:

'Notwithstanding the details submitted, within 6 weeks of the date of this decision notice the window hereby permitted shall be non-opening, acoustic double glazed and , and glazed in obscure glass, which shall be level 5 obscurity, and shall be so retained thereafter'. This condition has not been complied with because the time period has passed and the window is not non-opening and is not glazed in obscure glass at level 5 obscurity.

- **The Requirements of the notice**

Replace all three windows within mansard roof at third floor level to the north elevation of the land shown in Appendix 1 with windows which are non-opening, acoustic double glazed and glazed in obscure glass, which shall be level 5 obscurity.

- **The Compliance period**

- The period for compliance with the requirements is 3 (three) months.

- **The Grounds of Appeal**

- Appeal A (3303440) is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Appeal B has lapsed.

Decision

1. The appeals are dismissed. See formal decision below.

Background information

2. The appeal property is a five storey building which is located at the junction of Park Road and King Cross Road, close to Halifax town centre and within the '*People's Park Conservation Area*' (PPCA). Prior to conversion to 28 flats, the building had previously been in office use and had been occupied by Calderdale Council Adult Health and Social Care Services.
3. To the north of the site there are residential and commercial properties. To the east there is a car park and further residential properties. Kings Cross Road is to the south and to the west is the Kings Centre and Church, which backs on to a block of flats and the '*People's Park*' which is a Grade II* Listed Historic Park and Garden. Some properties to the north, along Park Road and 'The Kings Centre' to the west are also Grade II Listed Buildings.

Planning and Enforcement History

4. The property lies within an approved '*Primary Housing Area*' (PHA), as defined in the '*Replacement Calderdale Unitary Development Plan*' (RCUDP). In such areas the Council supports proposals for the conversion of buildings to residential use, provided no unacceptable environmental, amenity, traffic or other problems are created.
5. On 3 May 2018 Prior Approval (18/56005/CLAS3O) for change of use from offices (B1a) to 28 flats (C3), was submitted and on 14 June 2018 the LPA determined that it was not required. On 4 July 2018, Planning Permission (18/00400/FUL), relating to external alterations comprising additional windows, was granted subject to conditions. On 28 February 2020, Planning Permission (19/01313/FUL), relating to the installation of another additional window within the mansard roof at third floor level, was granted retrospectively subject to conditions.
6. As indicated above the Council considers that there has been a failure to comply with conditions subject to which these two Planning Permissions (18/00400/FUL and 19/01313/FUL) were granted. In particular, it is indicated that the 3 mansard windows on the northern elevation at third floor level, are '*clear-glazed*' and are '*not non-opening*'.
7. The Council indicates that this is detrimental to the residential amenity and privacy of the occupants of No.3 Park Road. This is considered to be contrary to Policy BE1 (General Design Criteria), Policy BE2 (Privacy, Daylighting and Amenity Space) and Policy EP8 (Incompatible or Hazardous Land Uses) of the Replacement Calderdale Unitary Development Plan (RCUDP).
8. It is also stressed by the Council that this unauthorised development cannot benefit from permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) because an apartment building is not a 'dwellinghouse'.
9. The breach was brought to the attention of the Council in August 2018 and a site visit was carried out in October 2019. On 14 October 2019 a Stage 1 letter was sent to the owner, Mandale Apartments 4 Ltd. On 31 October 2019 a response was received to the Stage 1 letter indicating that a Planning Application (19/01313/FUL as referred to above) would be submitted to retain the 3 windows.
10. Application 19/01313/FUL granted permission to retain the windows, subject to conditions which are set out in the EN. On 9 August 2021, the Registers of Title for the

property were obtained from the HM Land Registry and the registered proprietor was noted to be Premier Ground Rents No 5 Limited (Co. Reg. No. 10088718).

11. On 25 November 2021 a Planning Contravention Notice (PCN) was served on *'The Company Secretary, Premier Ground Rents No 5 Limited'*. A response was received by the Council on 30 November 2021 and the EN was subsequently issued.

The Appeal on ground (a)

Relevant Policy

12. The National Planning Policy Framework (NPPF) is a major material consideration. The NPPF has confirmed that applications for Planning Permission (PP) must be determined in accordance with the 'development plan' (DP), unless material considerations indicate otherwise. Guidance in the NPPF indicates that weight should be given to relevant policies in the DP according to their degree of consistency with the NPPF and that, the closer these policies are, the greater the weight may be given.

13. Until the emerging Calderdale Local Plan (CLP) is adopted (not expected until at least late March 2023), the Saved Policies of the RCUDP form the 'development plan'.

14. The relevant policies include BE1 (General Design Criteria), BE2 (Privacy, Daylighting and Amenity Space) and EP8 (Incompatible or Hazardous Land Uses). These policies accord with the those of the NPPF. I have, therefore, afforded them significant weight in my consideration of this appeal.

The Main Issue

15. The main issue is the effect that the non-compliance with Conditions 2 and 3 of Planning Permission 18/00400/FUL, and Condition 2 of Planning Permission 19/01313/FUL, have had on the living conditions of the occupants of the adjacent dwelling at No.3, with particular reference to loss of privacy and noise and disturbance.

The gist of the case for the Appellant(s)

16. On the Appeal form, in Section E, Box (a) is ticked which confirms that PP is sought for what is alleged in the notice. In effect this means that permission is being sought for the retention of the 3 mansard windows without complying with the conditions set out in the PPs 18/00400/FUL and 19/01313/FUL. In the EN breaches 1 and 2 relate to conditions 2 and 3 of PP Ref 18/00400/FUL and breach 3 to condition 2 of PP Ref 19/01313/FUL.

17. In the explanatory notes it is stated that the issue *'pertains to Mandale'*, the original developer of the flats. It is argued that the company must be contacted and made to replace the unauthorised windows which have been installed without complying with the required conditions.

18. The Council's role in the planning process is also queried. It is stated that *'it is difficult to understand why the planning permission was granted in 2018 and final checks carried out in 2022'* and why the Council did *'not continually check throughout the build and just before the end of the build/prior to occupation that all planning requirements were met'*.

19. It is further stated that if the Council *'cannot reach the developer, then the developer's solicitor should be contacted'* and failing that *'the planning permission should be issued with everything discharged'*. It is stressed that *'the current owners purchased the property in good faith and cannot be held accountable for something the developer did not do'*.

The gist of the case for the Council

20. The Council refers to the reasons why the EN was issued and why the alleged breaches are considered to be contrary to relevant policy. It is stressed that it was expedient to issue the notice for the reasons detailed in the EN and that the development, as carried out, is contrary to Policies BE1, BE2 and EP8 of the RCUDP.

21. It is also considered that the unauthorised works are contrary to the NPPF in that this indicates that permission should be withheld if adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole.

22. Reference is made to Paragraph 59 which highlights that *'effective enforcement is important'* and that LPAs should *'act proportionately'*. It is considered that the Council has acted proportionately and has given sufficient time to comply with the EN.

23. The Council disagrees with the case set out by the appellant(s) and maintains that PP should be withheld for the reasons set out in the notice. It is stressed that any PP attaches to the land and any conditions imposed binds successors in title.

24. It is also indicated that a wide discretion is afforded to an LPA in deciding how to take enforcement action. It is indicated that under section 172(2) of the Act a notice should be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

25. The Council further stresses that there is no specific legislative imperative that an LPA must be proactive through implementing a *'systematic inspection program to ensure compliance with the planning scheme and applicable legislation'*. It is indicated that the aim of enforcement action is to seek to resolve breaches of planning control in the public interest, but not to protect the private interests of individuals.

26. It is argued that it *'is for a potential landowner to make due-diligence investigations/undertake research into a property before purchase to ascertain any existing issues'*. It is stated that such investigations would have provided the appellant(s) or their representatives with freely available planning information to assess if the development had been carried out in accordance with approved plans.

27. The Council has considered the implications of pursuing enforcement action having regard to the provisions of the Human Rights Act 1998. It considers that in so doing it would not be unacceptably interfering with the human rights of the Appellant(s) entitlement to the peaceful enjoyment of their possessions.

My assessment

28. Having had regard to the main issue, I agree with the LPA that the non-compliance with the conditions of the two PPs has resulted in harm being caused to the living conditions of the occupiers of the property at No 3 Park Road.

29. During my site visit I was able to look out from 2 of the 3 appeal windows (in Flat 26) towards the gable windows of No 3 Park Road. I was unable to access Flat 25 in order to look out of the third window. However, I also saw all 3 appeal windows from within the adjacent property at No 3 and from the rear yard of the house. I was, therefore, clearly able to assess the extent of the overlooking from these windows into those at No 3, as well as noting the proximity of the respective windows with regard to likely sound implications for both properties.

30. As a result it is evident to me that there is unacceptable overlooking of the property at No 3 due to the 3 unauthorised Mansard windows. I consider that this has

resulted in an unacceptable loss of privacy for the occupants of this house. I agree with the Council that it was expedient to issue the notice for the reasons given and that the development as carried out is contrary to Policies BE1, BE2 and EP8 of the RCUDP. I also agree that it is contrary to the NPPF which indicates that planning permission should be withheld if there are adverse impacts which have significantly and demonstrably outweighed any benefits.

31. In addition to the loss of privacy for the occupants at No 3 and, due to the proximity of the respective windows, I consider that there is a serious issue regarding noise and disturbance. The 3 mansard windows were supposed to be non-opening and this was clearly to ensure that any noise transmission between the two properties was kept to a reasonable level. With opening windows it is my view that any unreasonable noise, such as loud music being played within the Flats at Nos 25 and 26, would definitely be heard and would cause disturbance for the occupants of No 3.

32. It follows that I do not consider that planning permission should be granted for the windows as installed and without complying with the conditions attached to the permissions. These conditions were imposed in order that the mansard windows would not result in any harm being caused to the occupants of neighbouring properties either by loss of privacy or through unacceptable levels noise and disturbance. Appeal A fails, therefore, on ground (a).

Other Matters

33. I sympathise with the predicament in which the Appellants now find themselves. However, the fact is that whoever was responsible for the installation of the mansard windows (without complying with the conditions) at the time they were installed, carried out unauthorised works. These works have resulted in harm being caused to an interest of acknowledged importance (namely the amenities and privacy of neighbours) and the only means of rectification is to carry out works to the windows to ensure that they are completed in accordance with the two PPs; the conditions imposed therein and the requirements of the notice.

34. I acknowledge that usually an LPA might be aware, on completion of a development, whether or not any conditions have been complied with. However, as indicated by the Council, there is no legislative imperative that a LPA must implement a systematic inspection program to ensure compliance with a planning scheme and applicable legislation. The onus to ensure compliance with a permission and its conditions rests with the developer and successors in title.

35. For whatever reasons the conditions were not complied with and as indicated by the Council, *'planning permission attaches to the land and any conditions imposed on the permission will bind successors in title'*. In this situation therefore liability on the part of the appellants in relation to the enforcement notice is unavoidable. It is now a matter for them, as opposed to the Council to liaise with others in order to comply with the requirements of the notice.

36. In considering the appellants' Human Rights under the Human Rights Act 1998, including their entitlement to the peaceful enjoyment of their possessions, I consider that the enforcement action carried out by the Council was proportionate and that the Appellants' rights have not been unacceptably interfered with.

37. In reaching my conclusions I have taken into account all of the other matters raised by the main parties and an interested person. However, none of these carries sufficient weight to alter my conclusion on the main issue and nor is any other factor of such significance to change my decision that the enforcement notice should be upheld.

Formal Decision

38. Appeal A is dismissed and the enforcement notice is upheld. Planning Permission is refused on the application deemed to have been made under section 177(5) of the Act in relation to Appeal A.

39. Appeal B has lapsed but if this were not the case it would also have failed for the reasons set out above.

Anthony J Wharton

Inspector