



Appeal Decision

Site visit made on 21 November 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/G5750/C/22/3305768

316C Romford Road, Forest Gate, London, E7 8BD

- 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 Equator Properties UK Limited against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 8 August 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building containing four self-contained units of residential accommodation.
 - The requirements of the notice are:
 1. Demolish the building (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1).
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is 6 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. It is directed that the enforcement notice be varied by:
 - Deletion of steps 1) and 2) under section 5 (What you are required to do), and substituted therefor by the following steps:
 - 1) Make all the necessary alterations and modifications to the building (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1) so that it wholly accords with the plans approved by the Council under planning permission ref: 17/03965/FUL on 31 January 2018, so as to comply with the terms of this permission, including its conditions and limitations;
 - Or,
 - 2) Demolish the building (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1);
- And

3) Remove all constituent materials from the land resulting from the compliance with steps 1 or 2 above.

- Varied by deleting the words "six months" within section 5 (What you are required to do) and its replacement with "twelve months".

2. Subject to these variations, the enforcement notice is upheld.

The appeal on Ground (f)

3. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
4. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
5. However, the appellant highlights that planning permission was granted for "*the Construction of new two storey building comprising 2 x 2 bed maisonettes on existing vacant site rear of 316 Romford Road, E7*" on 31 January 2018 (Council ref: 17/03965/FUL). Furthermore, an application was approved for the approval of details pursuant to condition 3 (Construction Logistics Plan) and 4a (Contaminated Land) attached to planning consent 17/03965/FUL dated 31.01.2018 on 7 June 2019. Therefore, the appellant considers that a lesser step would be to modify the scheme to be consistent with this previous approval.
6. The Council argue that that development was never implemented and therefore the approved scheme lapsed on 31 January 2021. They also state that the works, for the unauthorised development, began construction in the early part of 2019 and was substantially complete in the early part of 2020.
7. However, the fact that the as-built scheme is different does not necessarily mean that the planning permission has expired. The relevant question is whether or not it began (section 91 of the Act). Section 56(2) and (3) of the Act, provide that development shall be taken to be begun for the purposes of ss91 and 92 on the earliest date on which any material operation comprised in the development begins to be carried out. 'Material operations' are defined in s56(4) of the Act as including: any work of construction in the course of the erection of a building [s56(4)(a)], and the digging of a trench [s56(4)(b)]. Case law has established that works undertaken solely to keep a planning permission alive, when the developer has no intention of proceeding further at that time, can suffice to initiate development.
8. In this regard, the appellant states that the existing building is in a broadly similar position to the approved scheme, which has not been disputed by the Council. Therefore, the overall foundation trench that was built would broadly match the approved building footprint, parts of it would contain parts of the foundations of the building 'as built,' in accordance with s56(4)(b) of the Act. Significant parts of the ground works would relate to the original planning permission and be substantially usable in the permitted building.

9. Case Law has established that the only question, when deciding whether development was begun in accordance with a planning permission (PP), is whether the development was permitted by the PP with its conditions. If the development was in contravention of a 'condition precedent,' it cannot properly be described as commencing in accordance with the PP. On this occasion the Council state that the appellant failed to discharge conditions 5 (secured by design), 6 (materials), 7 (balconies), 8 (landscaping) and 9 (grassed bank details).
10. To determine whether the above conditions should be so described as a condition precedent:
 - 1) It must prohibit the commencement of development until a requirement has been met – as opposed, for example, to requiring that something is done before occupation.
 - 2) It must have such significance to the PP that it goes to the heart of the PP as a matter of judgment.
11. With regard to conditions 6, 7, 8 and 9, these conditions prohibit above ground works only, and therefore do not prohibit the commencement of development itself, which in this case involved below ground works comprising the digging of a foundation trench. As such, conditions 6 to 9 cannot be described as a 'condition precedent'.
12. With regard to condition 5, this requires details of a 'secured by design' award scheme to be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. Whilst I accept that this is an important condition and necessary to be approved prior to occupation, I do not consider that this condition goes to the heart of the planning permission. Indeed, like the other conditions mentioned above (conditions 6 to 9), I see no reason why it was necessary to agree the details of this before commencement of the development. Therefore, in my judgement, I also consider that this condition is not a 'condition precedent.'
13. Therefore, based on all of the evidence before me, I consider, on the balance of probabilities, it is more likely than not that the original permission had commenced before the permission was due to expire. Case law has established that enforcement should be remedial rather than punitive. In light of the above, the breach of planning control could be addressed through an alternative option to require the development to be carried out in accordance with the plans approved under ref: 17/03965/FUL. The appellant would need to, as a matter of urgency seek approval of any outstanding conditions mentioned above.
14. I will therefore add an alternative requirement to make the development comply with the terms of the extant PP, including its conditions and limitations, which would remedy the breach of planning control, in line with s173(4)(a) of the 1990 Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
15. As such, the appeal on ground (f) succeeds and I will vary the notice to insert this alternative requirement.

The appeal on Ground (g)

16. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 to 12 months, since the property is currently occupied by tenants, and additional time is required to allow the tenants to vacate the property and carry out the remedial works.
17. I appreciate that all tenants need to vacate the premises in order to carry out the remedial works. In my view 12 months would strike a more reasonable and proportionate balance in this instance. This would also provide some additional time to allow the appellant to seek approval for the outstanding conditions mentioned above. I shall therefore extend the period from 6 to 12 months for compliance with the notice.
18. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

19. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on grounds (f) and] (g) succeeds to that extent.

R Satheesan

INSPECTOR