



## Appeal Decision

Inquiry held on 23-25 January and 2 February 2024

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 March 2024**

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### **Appeal Ref: APP/U5360/C/20/3259652**

#### **3-5 Kingsland High Street, Hackney, London E8 2JS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Artover Limited against an enforcement notice issued by London Borough of Hackney.
  - The notice was issued on 14 August 2020.
  - The breach of planning control as alleged in the notice is the material change of use of the property to 13 self-contained flats at first, second, third and fourth floor levels and associated external alterations comprising the erection of a second storey extension, mansard roof extensions and balconies, and the installation of doors, lift shaft, solar panels, external gas meter enclosure and air conditioning units.
  - The requirements of the notice are 1. Remove the two storey mansard roof extension; 2. Cease the residential use of the property; 3. Remove the solar panelling from the roof of the property; 4. Remove the gas meter enclosure and associated gas equipment, including piping, from the side elevation of the property; 5. Remove the lift shaft; 6. Remove the door facilitating the use of a roof terrace within the internal courtyard of the property at first floor level; 7. Remove all internal partitions, doors, bathroom and kitchen fixtures and fittings that facilitate the use of the property as self-contained flats; and 8. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
  - The period for compliance with the requirement is ten months.
  - The appeal was proceeding on the grounds set out in section 174(2)(a), (c), and (f) of the Act but the ground (c) and (f) appeals are not now being pursued. Since an appeal is being pursued under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.
  - This decision supersedes that issued on 15 September 2022. That decision was remitted for re-determination by order of the High Court.
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### **Decision**

1. The enforcement notice is varied by the deletion of 'the material change of use of the property to 13 self-contained flats at first, second, third and fourth floor levels and associated external alterations comprising the erection of a second storey extension, mansard roof extensions and balconies, and the installation of doors, lift shaft, solar panels, external gas meter enclosure and air conditioning units' in section 3 and the substitution instead of 'the material change of use of the property to self-contained flats at first, second, third and fourth floor levels and associated external and internal alterations'.

2. Subject to the variation the enforcement notice is upheld, the appeal is allowed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the property to self-contained flats at first, second, third and fourth floor levels and associated external

and internal alterations at 3-5 Kingsland High Street, Hackney, London, subject to conditions.

### **Background information**

3. In June 2015 planning permission was granted by the Council for 'Erection of mansard roof extension to create fourth floor roof level; part two storey, part single storey, part mansard rear extensions at second and third floor level; insertion of side first floor level window; change of use from bank (A2 Use Class) to provide a flexible A1 and A2 commercial unit at ground and basement floor levels; part A2 use at first floor level; and 9 self-contained flats (comprising of 2x1 bedroom units; 5x2 bedroom units; and 2x3 bedroom units) on upper floor levels' at 3-5 Kingsland High Street, London.

4. In January 2016 the Council confirmed that their prior approval was not required for 'Change of use/internal conversion from Use Class A2 (financial) to Use Class C3 (residential) to provide 3 No. residential units at first floor level' at 3-5 Kingsland High Street, London, because the development would comply with Class M of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015.

5. Between Summer 2016 and January 2018 3-5 Kingsland High Street was converted to 13 residential flats but not in accordance with either the planning permission or the prior approval scheme. In February 2017 a part retrospective part prospective planning application was submitted to regularise the development that was, at that time, under construction. That application was not determined.

6. The Council issued the enforcement notice because, in brief, the accommodation is substandard, which adversely affects the amenities of its occupants, there is an inappropriate dwelling mix, the development harms the character and appearance of the building, the surrounding area and the Dalston Conservation Area, and because there is a lack of affordable housing.

7. The appeal against the enforcement notice was first determined, following a site visit, in February 2022. That decision was successfully challenged in the High Court and it was remitted for re-determination. The subsequent decision was determined, also following a site visit, in September 2022. The second decision was also successfully challenged in the High Court. On both occasions, under the ground (a) appeal, the Appellant was not seeking planning permission for the 'as built' development but for one of four alternative schemes; 1A, 1B, 2A or 2B.

8. A Hearing was held on 6 September 2023 at which it was ruled that an Inquiry would be held to consider the appeal. Prior to the Hearing the Appellants stated that they did not wish to pursue alternative schemes 1A and 2A. The Council has accepted that alternative schemes 1B and 2B would not cause any harm to the character and appearance of the building and the Dalston Conservation Area, and that residents of either scheme would have acceptable living conditions. They maintained at that time their concerns for a lack of affordable housing and, with regard to alternative scheme 2B, an inappropriate dwelling mix.

9. Alternative scheme 1B (AS 1B) resembles the development for which planning permission was granted in 2015, with the part of the building for which prior approval was not required returned to commercial use. The scheme differs from the permitted scheme in that it would be for eight residential units rather than nine, to address issues relating to unit size. Alternative scheme 2B (AS 2B)

would be the as-built development but altered to be for 11 residential units; the reduced number of units again to address issues relating to unit size.

10. The Appellants have entered into a Unilateral Undertaking (UU) made pursuant to Section 106 of the Act. The obligations in the UU are agreed between the main parties other than those relating to the payment of, for either scheme, a commuted sum in lieu of the provision of on-site affordable housing. At the opening of the Inquiry the Appellant disputed the need for the payment, though included as an obligation in the UU at that time, of an education contribution in relation to AS 2B. During the Inquiry the Council withdrew their requirement that such a payment should be made. They also withdrew, in terms, their concerns regarding dwelling mix in relation to AS 2B. The executed UU submitted after the Inquiry excludes any education contribution.

### **Procedural matters**

11. The Council accepts that the ground (a) appeal should succeed and that planning permission should be granted subject to conditions and to the obligations in the UU. The main parties differ on whether the enforcement notice should be quashed, the Appellant's position, or upheld, the Council's position.

12. The Council maintains that "...the development that has taken place is both unlawful and unacceptable in planning terms". This is accepted by the Appellant. But the Council accepts that the development that has taken place would be acceptable in planning terms if the planning permission granted by this decision is implemented in accordance with all of its attached conditions. If this occurs then the development would be lawful. The 17 conditions are agreed by the Appellant and 15 of them require matters to be approved by the local planning authority and carried out in accordance with an approved timetable. The sanction in each of these conditions is that "The permitted development shall cease its use as residential and all requirements of the enforcement notice insofar as they are inconsistent with the decision shall be carried out...".

13. If the enforcement notice is quashed then it ceases to have effect. In that event, the sanction included in each of the 15 conditions would be no sanction at all. It is worth noting here that the Appellant, whilst maintaining that the notice should be quashed, has suggested an alternative form of condition which includes a similar sanction to that set out above; "The development hereby permitted shall cease and all requirements of the notice shall be carried out...". Compliance with the requirements of a notice cannot be achieved, as a matter of fact, if the notice is not in effect. The circumstances in the Timberyard appeal (Appeal Ref. 3208237) are different to those in this case, which are unusual. Taking into account these unusual circumstances and the sanction included in 15 agreed conditions, the enforcement notice has been upheld. The Appellant need not be concerned by this if they comply fully with the agreed conditions.

14. The unusual circumstances of this case require the breach of planning control alleged in the enforcement notice to be varied. This is agreed by the main parties. The breach of planning control set out in the notice, so that planning permission can be granted in the correct terms, has been varied to be 'the material change of use of the property to self-contained flats at first, second, third and fourth floor levels and associated external and internal alterations'.

## Planning policy

15. The Development Plan includes the Hackney Local Plan 2033 (HLP), adopted in July 2020, and The London Plan 2021 (LP). LP policy H4 states that the strategic target is for 50% of all new homes delivered across London to be genuinely affordable. HLP policy LP13 carries forward LP policy H4 and requires that schemes of 10 units or more that propose less than 50% affordable housing will be required to submit a detailed viability assessment and will be subject to early and late stage review. The policy also states that schemes which fall below the 10 unit threshold will be required to provide on-site provision or payments in lieu up to the equivalent of 50% of housing delivered as affordable housing, subject to viability.

16. The Council has adopted a S106 Planning Contributions Supplementary Planning Document (PCSPD). The PCSPD requires, with regard to housing schemes of 10 units or more, 50% affordable housing on-site or where this is not feasible a payment in lieu calculated on a case by case basis taking account of development viability, and, with regard to housing schemes of less than 10 units, 50% affordable housing on site or a payment of £50,000 per unit.

## Reasons

17. The only issue between the parties relates to the payment of a commuted sum in lieu of the provision of on-site affordable housing. The Council maintains that such a payment, for either scheme, should be made in accordance with the requirements of planning policy, whereas the Appellant maintains that neither alternative scheme is viable and that no affordable housing contribution should be made. Consequently, the UU includes a 'blue pencil clause', clause 3.4. The effect of the clause is that this decision will determine if an affordable housing contribution is required and if it is which of the alternative contributions is required.

18. The main issue in the ground (a) appeal is whether an affordable housing contribution is required and if it is which of two alternative contributions is required. With regard to paragraph 7.9 of the Statement of Common Ground "...on the appropriate basis...", in the last sentence, means the basis established from the conclusion on this main issue.

19. The Council claims that "...a viability argument is incapable of justifying the provision of an affordable housing contribution below the full policy compliant 50% figure on an enforcement appeal such as this". The Council has, in this regard, referred to Appeal Decision Ref. APP/U5930/C/21/3280591 which relates to a development on Land at Chingford Mill Pumping Station (the Chingford appeal). In his decision the Inspector concluded that "The justification for flexible application of policy requirements may be clear where a lack of financial viability would threaten the delivery of housing. While planning permission may be granted in respect of development that has already been carried out, it is plain that there cannot be any threat to the delivery of housing that already exists".

20. The circumstances in this case are similar to those in the Chingford appeal; both appeals are against issue of an enforcement notice alleging unauthorised development. Furthermore, there is no threat to the retention of residential development because the Council has accepted that the development can be altered to be AS 1B or AS 2B. But for either of these schemes to be acceptable it must comply with the development plan or there must be material considerations to justify a departure from that plan, and either of these circumstances must prevail before the development can be judged to be lawful and sustainable.

21. To comply with the development plan as a whole AS 1B or AS 2B must comply with HLP policy LP13. This policy, for schemes of 10 units or more and where less than 50% affordable housing is proposed, as in this case, requires a payment in lieu taking into account development viability, and, with regard to housing schemes of less than 10 units, a payment in lieu subject to viability (emphasis added). It is therefore enshrined in the policy that payment in lieu of on-site provision of affordable housing is subject to the financial viability of the scheme under consideration. In the Chingford appeal there was no viability assessment before the Inspector and there were eight other main issues, whereas in this case there is only one main issue.

22. Whilst maintaining that a viability argument is incapable of justifying the provision of an affordable housing contribution below the equivalent of an onsite provision of 50% affordable housing the Council has, nevertheless, carried out a viability assessment. Like the Appellant, the Council claims that their viability assessment has been carried out in accordance with the RICS standard 'Assessing viability in planning under the National Planning Policy Framework 2019 for England' (the RICS standard), first published in March 2021. Though the National Planning Policy Framework (NPPF) has since been updated on three occasions the RICS standard remains current.

23. The RICS standard is applied in assessing the viability of prospective developments, and does not provide any guidance on assessing the viability of developments that have already been carried out. The main parties have taken different approaches to applying the RICS standard, and it is this that has resulted in their different conclusions on viability. It is these matters of principle that must be considered to reach a conclusion on the main issue.

24. The Appellant's approach has been to assess the development as if it has yet to be carried out. The building has been valued as if it is still in commercial use to arrive at a benchmark land value (BLV) and the alternative schemes, in their entirety, have been costed at today's building rates. This methodology is artificial and hypothetical and does not reflect the fact that the building is not currently in commercial use or the fact that building works have already taken place to complete a significant part of either alternative scheme. In this regard it is worth noting that neither scheme would require any alterations to the layout of the second, third and fourth floors of the building; which comprise one 1-bedroom, four 2-bedroom and two 3-bedroom apartments.

25. The Council maintains that the Appellant's methodology is wrong because it does not reflect current circumstances, either in terms of the building works that exist and the requirements of the enforcement notice that is in place. It is, indeed, well established that planning decisions must be made with regard to the law, policy and facts as they stand on the day the decision is made. The Council's methodology, consequently, discounts the building costs that have been incurred to date and takes into account the costs that would be incurred to remediate the building to its previous commercial use to arrive at their assessment of a BLV.

26. The Council's methodology is also artificial because it fails to take into account, at the time this decision is being made, that they accept that planning permission should be granted for residential use of the building subject to conditions. The reality is that the eight units of AS 1B already exist and the scheme, in substance, only requires the return to commercial use of that part of the building for which prior approval was not required. Also, AS 2B, apart from

minor alterations to its layout, only requires combining one studio flat and one 1-bedroom unit to create one 2-bedroom unit.

27. The first component of BLV is the existing use value (EUV) of a property. The Council's suggestion that the EUV should take account of costs incurred to return the building to commercial use was considered in Appeal Decision Ref. APP/U5360/W/23/3323521 which relates to a development at 138 Albion Road, London in the Borough of Hackney (the Albion Road appeal). This was a Section 78 appeal but it related to retention of a development already carried out so was, in essence, the same as this Section 174 appeal. The Inspector in the Albion Road appeal found the aforementioned suggestion by the Council to be "...unnecessary as the viability appraisal process is based on a hypothetical scenario where reasonable comparable costs can be compared using up to date costs". This is the approach the Appellant has taken in this appeal.

28. The RICS standard, as previously mentioned, does not provide any specific guidance on assessing the viability of developments that have already been carried out. So, assessing viability on a hypothetical basis is necessary to arrive at a fair and reasonable BLV, as was concluded by the Albion Road appeal Inspector. The Appellant has valued the building as if it is in commercial use and has arrived at a BLV. He has also costed the two alternative schemes, setting aside any necessary costs which will be incurred to remediate the building in line with requirements of condition 1 of the permission. On the basis of those values and costs the Council's Senior Viability Officer, Mr Carney, accepts that neither alternative scheme is viable. Mr Bloss, for the Appellant, has also carried out the same exercise at 2016 values and costs and Mr Carney accepts that, also on this historical basis, neither alternative scheme would have been viable.

29. If the Council's methodology is accepted the EUV of the building is £114,857, because it takes account of the costs that would be incurred to revert the building to commercial use. However, as a matter of planning judgement and given the fact that the Council accepts that residential use of the building is acceptable, it is fair and reasonable to assess the EUV as if the building is currently in commercial use, and not to take into account costs that would be incurred to revert the building to that use. On this basis the Statement of Common Ground states that the EUV of the building if completed to be AS 1B or AS 2B is £1,115,000 or £1,465,000 respectively. Given ownership and other circumstances, which are not going to change, no premium need be applied to the EUV, so the BLV is the EUV.

30. The Appellant bought into use, at their own risk, a residential development of thirteen flats that does not comply with development plan policy and that is unlawful and unacceptable in planning terms, and which has been since the flats were first occupied. It is also fair and reasonable therefore, also as a matter of planning judgement, to discount building costs incurred to date, particularly as the Appellant has benefited financially from renting flats that are unlawful and unacceptable in planning terms, and only to include those building costs that would need to be incurred to complete either AS 1B or AS 2B. The outcome of expending these build costs would be a residential development that is in compliance with development plan policy and acceptable in planning terms.

31. The Appellant has assessed the build costs of completing AS 1B and AS 2B to be £610,261 and £817,796 respectively. But these costs include those that are required to comply with development plan policy other than that relating to affordable housing, such as £5,150 to provide cycle storage. Furthermore, the

works required to actually complete AS 1B and AS 2B are internal and would not require scaffolding; so it is not clear why the cost breakdown for AS 1B includes £123,291 for scaffolding. The Appellant's build costs for completing AS 1B and AS 2B would appear to be inflated by including costs associated with complying with requirements of the enforcement notice that are accepted by the Appellant. The Council has carried out the same exercise and their assessment of the build costs for completing AS 1B and AS 2B are £202,000 and £302,000 respectively.

32. The Appellant's assessment of the value of AS 1B is £5,695,000 and of AS 2B is £7,195,000. Taking into account the Appellant's build costs to complete AS 1B and AS 2B, even though they are inflated, and the aforementioned EUVs, the net residual value of AS 1B is £3,969,739 and the net residual value of AS 2B is £4,912,204. The Appellant might regard setting aside build costs to date to result in a punitive outcome rather than an outcome that is remedial. The outcome is neither. It is an outcome that is fair and reasonable and an outcome that has due regard, as far as is possible, to the circumstances that currently prevail. The outcome is that either scheme is viable and that the Appellant must pay the relevant full contribution sought by the Council; these being £400,000 for AS 1B and £1,284,086 for AS 2B.

#### Conditions and Obligations

33. The Council and the Appellant have agreed conditions. They have been amended, in the interests of clarity, precision and consistency, but they meet the tests set out in the National Planning Practice Guidance (NPPG). The conditions and reasons for them are given in a schedule attached to this decision.

34. A signed and dated Legal Agreement, made pursuant to Section 106 of the Act, was submitted shortly after the close of the Inquiry. The obligations of the Agreement are all related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement therefore complies with the tests set out in the NPPG and with Regulation 122 of the CIL Regulations 2010.

#### Other matters

35. It is inconceivable that the Appellant, once they have obtained planning permission for residential use of the building, would choose to throw away the money that has been expended to date, to expend further money to return the whole building to commercial use, and to forego future residential rental income. If they implement the permission in accordance with the conditions and the unilateral undertaking then the alternative scheme that is taken forward will be sustainable and lawful. If they do not then the conditions will require them to remediate the building in accordance with the requirements of the enforcement notice, which has been upheld so that this ultimate sanction remains in place.

#### Conclusion

36. The provisions of development plan policies, particularly HLP policy LP13, have been taken into account and the necessary viability assessment has been carried out. The specific circumstances of this appeal have also been taken into account, in particular the history of the development dating back to the grant of

planning permission in 2015 and the subsequent failure by the Appellant to build out the development in accordance with that planning permission.

37. The payment of an affordable housing contribution is required and the development for which planning permission has been granted, subject to conditions and the provisions of the unilateral undertaking as previously prescribed, complies with LP policy H4 and HLP policy LP13 and with the development plan as a whole.

***John Braithwaite***

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr M Reed

Kings Counsel

He called

Mr L Raistrick BA MPlan  
MRTPI

Managing Director of Centro Planning  
Consultancy

Mr R Bloss BA MSc  
MRICS

Head of Land and Viability at Red Loft LLP

### FOR THE LOCAL PLANNING AUTHORITY:

Mr C Streeton

Barrister

He called

Mr N Kirk BRTP

Planning Enforcement Deputy Team Leader

Mr J Carney MRICS

Senior Viability Officer

## **DOCUMENTS**

- 1 Opening submissions on behalf of the London Borough of Hackney.
- 2 Opening submissions on behalf of the Appellant.
- 3 Managing pupil rolls and SEND provision.
- 4 Statement of Common Ground.
- 5 Note on behalf of the London Borough of Hackney.
- 6 Note on behalf of the Appellant.
- 7 Statement of Compliance with CIL Regulations 2010 as amended.
- 8 Suggested Conditions.
- 9 Closing submissions on behalf of the London Borough of Hackney.
- 10 Closing submissions on behalf of the Appellant.

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:
  - a. 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:
    - i. Proposed plans for Alternative Scheme 1B (8 residential unit scheme with a dwelling mix arrangement of one studio/1-bedroom, five 2-bedroom and two 3-bedroom units) or 2B (11 residential unit scheme with a dwelling mix arrangement of three studio/1-bedroom, six 2-bedroom and two 3-bedroom units). These plans must also include details showing the removal of the:
      1. Two storey mansard roof extension;
      2. External lift overrun/shaft at roof level;
      3. External gas pipes;
      4. Door facilitating the use of the roof terrace within the internal courtyard of the Property at first floor level;
      5. Existing solar panels at roof level;
      6. Roof balustrade;
  - b. 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.
  - c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interest of the living conditions of future occupiers and to ensure that the external appearance of the building is satisfactory and does not detract from the character and visual amenity of the area.

2. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:
  - a. 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:
    - i. Full details of the materials to be used for the gas-meter enclosure;
    - ii. Full details of the low level fall-arrest system at roof level.
  - b. 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.
  - c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: To ensure that the external appearance of the building is satisfactory and does not detract from the character and visual amenity of the area.

3. The fire escape stairs hereby approved shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building. In particular these shall not be used as a balcony or any other amenity area.

Reason: To safeguard the amenities of adjoining premises and the surrounding area.

4. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. Full details of the following standards:
    1. Solar PV panels annual electricity generation
    2. Solar PV panels capacity
    3. Solar PV panels array
    4. Battery storage capacity
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable. Where compliance is not met, a remedial plan and associated cost plan must be prepared and submitted to the Local Authority for approval detailing the necessary measures to meet or improve upon the 'as designed' performance. Shortfalls may attract an additional financial contribution to the carbon offset fund.

Reason: In the interest of addressing climate change and securing sustainable and net zero and net zero carbon development and construction.

5. Within three months from the date of this decision, a 'Secured by Design' accreditation shall be obtained for such building or part of such building or use and thereafter all features are to be permanently retained.

Reason: To safeguard against anti-social behaviour and crime.

6. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:

- i. A retrofit plan demonstrating the ability for future connection to Decentralised Energy Network (DEN). The submitted details shall include drawings drafted at the appropriate scale and full detailed specification of the following, but not be limited to:
  1. Updated evidence of correspondence demonstrating proactive engagement with the District Heat Network provider and/or local authority to seek connection.
  2. Layout of energy centre/plant room showing space for future heat exchanger.
  3. Layout of obstacle free safeguarded route between heat exchanger and incoming DEN entry point.
  4. Details of on-site connection (including capping of pipework with flange) and confirmation of readiness of on-site connection to a future District Heat Network.
  5. Details of pre-installed pipework connecting identified plant room/heat exchanger to proposed heating system(s).

Where it has been robustly demonstrated that a refrigerant based heating system (VRF) is the only viable option, a retrofit plan shall be submitted to and approved in writing by the Local Planning Authority. The retrofit plan should:

6. detail how such system will be upgraded to a wet system compatible with a local DHN when there is a viable connection opportunity or when the system reaches its end of useful life whichever comes first and identify who will be responsible to implement the upgrade.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interest of addressing climate change and securing sustainable and net zero development and construction.

7. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:
  - a. 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:
    - i. A suitably detailed Air Quality Assessment. The Air Quality Assessment shall address how the proposal will impact on local air quality and detail of measures to protect the internal air quality, including:
      1. Identifying how the building works and related activities as well as the future operation and use of the development may impact upon local air quality.
      2. Modelling the impact of the development on local air quality.

3. Identifying and providing full details of measures that will be implemented to maintain, and where possible, improve air quality in the vicinity of the development.
  4. Providing full details of measures that will be implemented to protect the internal air quality of buildings.
  5. Identifying measures that will be implemented or continue to be implemented after the completion of the development with clear timescales of when information will be provided.
- b. 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.
  - c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

REASON: To protect air quality and people's health by ensuring that pollutants and particulate matter are kept to a minimum during the course of building works and during the lifetime of the development.

8. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:
  - a. 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
    - i. a revised Energy Statement, providing :
      1. Minimum carbon savings against Part L 2021
      2. Maximum Space Heating demand
      3. Maximum Energy Use Intensity
  - b. 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.
  - c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interest of addressing climate change and securing sustainable and net zero development.

9. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. a dynamic overheating risk assessment assessing all units and following the CIBSE TM52 (non residential) & TM59 (residential) methodology. All units must be assessed against weather files CIBSE TM49 DSY1, DSY2 & DSY3, results should demonstrate a 100% pass rate for all units shown under weather file DSY1. If 100% pass rate is not achieved under weather files DSY2 & 3, a retrofit plan must be submitted. detailing how further mitigation measures can be installed and who will be responsible to manage future overheating risk for 100% of units to pass under both weather files DSY2 and DSY3. Where any additional remedial mitigation measures are required, the product specifications and details must be provided.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interest of addressing climate change and securing sustainable and net zero carbon development.

10. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. Details of a green roof, designed for biodiversity and as part of a sustainable urban drainage system, with a minimum substrate of 80mm.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interest of enhancing biodiversity and managing flood risk and providing a sustainable drainage system.

11. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. A detailed Demolition and Construction Management Plan covering the matters set out below:
    1. A demolition and construction method statement covering all phases of the development to include details of noise control measures and measures to preserve air quality (including a risk assessment of the demolition and construction phase).
    2. A demolition and construction waste management plan setting out how resources will be managed and waste controlled at all stages during a construction project, including, but not limited to, details of dust mitigation measures during construction works, the location of any mobile plant machinery, details of measures to be employed to mitigate against noise and vibration arising out of the construction process demonstrating best practical means;
    3. A demolition and construction traffic management plan to include the following: the construction programme/timescales; the number/frequency and size of construction vehicles; construction traffic route and trip generation; location of deliveries; pedestrian and vehicular access arrangements; any temporary road/footway closures during the construction period; details of parking suspensions (if required) and the duration of construction;
    4. A dust management plan to include details of how dust from construction activity will be controlled / mitigated against following best practice guidance. This should include monitoring of particulate matter at the application site boundary in the direction of sensitive receptors following the SPG Mayor of London Control of Dust and Emissions Guidance.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: To avoid hazard and obstruction being caused to users of the public highway and in the interest of public safety and amenity. To protect air quality and people's health by ensuring that the production of air pollutants, such as nitrogen dioxide and particulate matter, are kept to a minimum during the course of building works.

12. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. Within 3 months of the date of this decision a scheme for the following matters shall have been submitted:
  - i. Test results carried out confirming that the standard of sound insulation installed in accordance with BS 8233:2014 "Guidance on sound

insulation and noise reduction for buildings” to attain the following internal noise levels:

1. Good resting conditions: Living rooms 35 dB (day: T = 16 hours 07:00 – 23:00)
  2. Good dining conditions: Dining areas 40dB (day: T = 16 hours 07:00 – 23:00)
  3. Good sleeping conditions: Bedrooms 30 dB (night: T = 8 hours 23:00 – 07:00 LAm<sub>ax</sub> 45 dB (night 23:00 – 07:00)
- b. 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.
  - c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: To ensure that the occupiers and users of the proposed development do not suffer a loss of amenity by reason of excess environmental noise.

13. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. details for the provision of refuse/recycling storage facilities
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: To ensure sufficient refuse and recycling storage within the development.

14. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. A waste management plan outlining collection arrangement
- b. 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.

- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interests of providing appropriate waste collection arrangements.

15. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. A policy compliant cycle parking plan which shows details of layout, foundation, stand type and spacing.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: To ensure that adequate provision for the safe and secure storage of bicycles is made for future occupiers and in the interest of safeguarding highway safety.

16. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. Drawings showing the location of a minimum of six swift/bat nesting boxes and/or bricks.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interests of biodiversity.

17. The development hereby permitted shall cease its use as residential and all requirements of the upheld enforcement notice insofar as they are inconsistent

with the decision shall be carried out within 12 months of the date of failure to meet any one of the requirements set out in (a) to (d) below:

- a. 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:
  - i. A fire statement showing how the building will function in terms of fire, emergency evacuation and the safety of all users.
- b. 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.
- c. If an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Reason: In the interests of fire safety.