



Appeal Decision

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/X5210/C/24/3355424

Land at 36 Pandora Road, London NW6 1TT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Mohammed Rasool of Venetian Star Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 9 October 2024.
- The breach of planning control as alleged in the notice is without planning permission: the change of use from 16 residential units to use as temporary sleeping accommodation.
- The requirement of the notice is to: cease the use of the building for temporary sleeping accommodation.
- The period for compliance with the requirement is: One (1) month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. This case had originally been programmed to be determined by way of a Public Inquiry opening on 20 March. A Casework Management Conference (CMC) took place on 6 February 2025 at which it was confirmed the terms of the appeal would include ground (b), (c) and (f). However, following the CMC it was confirmed that the fee for the deemed planning application had been paid and therefore that is also considered in my formal decision.
3. For the reasons given below, the conduct of this appeal has led me to invoke Section 176(6) of the Act which allows me on behalf of the Secretary of State to: “(a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are so specified for the expedition of the appeal, and (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.” I formally gave notice to the appellant under these provisions, that they must submit their statement of case by 17.00 hours on Monday 24 February 2025. That specified step was not taken within the period specified in the notice.
4. This decision has been made without a site visit.

Reasons

5. The appeal was submitted on 12 November 2024. The grounds pleaded on the appeal form were (a), (b), (c) and (f). The same day, the case officer at the Planning Inspectorate wrote to the appellant’s first representative asking for

confirmation of whether the fee had been paid for the appeal on ground (a) and the deemed planning application. That letter confirmed that if the planning merits were to be considered, the fee would need to be paid by 26 November 2024. The appeal was confirmed as validly made on 18 November 2024 and the appellant was also written to again with a gentle reminder about the fee. An email was then received by the case officer which included a 'Whatsapp' message 'screen-shot' showing a receipt for payment of the fee dated 13 November 2024.

6. On the appeal form, the appellant had requested that the case proceeds by way of an inquiry. The Council on their appeal questionnaire conversely had stated that the appeal could proceed by way of written representations. Notwithstanding this, the start-date letter of 25 November 2024 from the Planning Inspectorate confirmed that the case would initially proceed by way of an inquiry.

7. The start-date letter also set out a number of important procedural matters for the appeal. It stated that:

“all s174 Enforcement Notice appeals proceeding by Inquiry will, subject to Inspector availability, follow a strict timetable with the aim of issuing the appeal decision within the 26 weeks of the receipt of a valid appeal. All dates contained in this letter including the event date are therefore fixed and cannot be changed.”

8. It confirmed the grounds of appeal, set the date for the inquiry as 25 March 2025, explained that an on-line CMC would be arranged for a date around 8 weeks after the letter and set the time-table of dates for the submission of the appeal documents. Importantly as well, that letter also explained under the heading “Important” that:

“if at any time before or during the determination of an appeal against an enforcement notice or LDC it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal(s), the Secretary of State may give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are so specified for the expedition of the appeal. Similarly, the Secretary of State may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations within the prescribed period.”

9. The start-date letter confirmed that statements of case needed to be submitted by 6 January 2025. It also provided advice on what statements of case should include. It said that the parties must supply a list of “*all factual written information you intend to rely on with your statement of case*” amongst examples of the type of evidence that can assist and that the procedure will be kept under review when various stages are reached. Later beneath the deadline date for statements of case it also states, “*You and the LPA should submit your statement of case giving full details of the case which you will put forward at the inquiry including copies of any documents (maps, plans etc) to which you will refer.*”

10. By the stage that the start-date had been confirmed, all that the appellant had submitted to support their case was a brief grounds of appeal document. That document was vague and did not refer to grounds (a) and (c) at all. It also did not provide any indication of what evidence the appellant’s case would rely upon or what matters should be considered or would be referred to when arguing that planning permission should be granted for what had been alleged. The grounds of

appeal document stated that the appellant had contacted the Council prior to the appeal saying that they could provide evidence which would assist them.

11. At the request of the Council and not opposed by the appellant, the deadline for the receipt of statements of case was extended to 13 January 2025. The reason was due to the Christmas and New Year holidays. The date for the inquiry also had to be rearranged at the request of the Council. The 20 and 21 March 2025 were eventually agreed.
12. On 23 December 2024 the case officer emailed the main parties offering alternative dates of Monday 27th January 2025 or Friday 31 January 2025 at 10.00am for the CMC. Both parties agreed to hold the CMC on Monday 27 January 2025.
13. On 21 January 2025, less than a week before agreed date for the CMC but 8 days after the statement of case had been due, the agent for the appellant emailed the case officer to say that they could not continue with their instruction due to a conflict with other work. They also suggested that the CMC would not be effective if it went ahead on 27 January 2025 as arranged and that they were assisting the appellant in receiving alternative representation. Given the appellant's lack of representation and a lack of a statement of case, I as the inspector, agreed to postpone the CMC. In the email sent by the case officer suggesting alternative dates, some detailed advice was given to the appellant. No explanation was provided by the agent regarding the continuing failure to provide any substantial statement of case, when the grounds of appeal document had indicated evidence existed. They did not say when their conflict with other work had become apparent.
14. On 22 January 2025, an email was sent to both main parties by the case officer and within that, they included words that I had prepared which read: *"In the circumstances, the inspector would be happy to consider a small delay of the CMC if that enables the appellant to instruct another agent. I would be available next Wednesday 29th Jan or the following Tuesday or Wednesday 4th & 5th Feb as alternatives for the CMC. Proofs of evidence will be due a few weeks after and so hopefully that would enable the case to stay on-track."* The email asked for a response by the end of that day because I would have limited time to prepare, if the CMC were to go ahead on Monday 27 January 2025.
15. The Council responded on 23 January 2025 giving possible dates. An email was sent from the case officer that morning forwarding the Council's suggested dates to the appellant personally, to his original agent and to the council asking the appellant to give urgent attention to this. The only response on behalf of the appellant that day was from his original representative saying that they were assisting the appellant in arranging alternative representation.
16. On 23 January, a detailed email was sent from the case officer confirming that there was no merit in going ahead with the CMC on 27 January 2025 due to the lack of representation or a statement of case. It also provided advice to the appellant about reviewing their case and pointing out that there is no statement of case from them for others to know what evidence is going to be provided in support of their grounds of appeal. Reference was also made, without prejudice, to the Planning Practice Guidance advice about potential awards of costs as well as saying that it may be necessary to review whether the inquiry procedure was still justified and that written representations is generally simpler with consequent

lower costs. The fact of the matter at that time was, that there was still no statement of case to enable a proper review of the procedure.

17. The email also said that proofs of evidence were due to be submitted on 25 February 2025, that if the appellant did wish to go ahead with the grounds pleaded, then an alternative CMC date would be Tuesday 4 February 2025. The appellant was asked to contact the case officer within the next 2 working days so that a revised programme could be confirmed.
18. On Monday 27 January 2025, following a telephone conversation between the appellant and the case officer, the appellant wrote to say that he was finding it difficult to find counsel or an agent to represent them at such short notice and requesting the adjournment of the CMC. A further conversation took place between the case officer and appellant where the process and informal nature of the CMC was explained and the appellant was also told that the 20 March 2025 could not be moved as the inquiry opening date. Later that day, the appellant emailed the case officer to say that they had found representation and suggesting dates. The Council objected to the revised dates suggesting that the appellant should have instructed somebody who could attend on 4 February.
19. On 29 January, an email marked as urgent was sent to the appellant to ask if they could attend a CMC at 14:00 hours on 6 February. The case officer asked if they could confirm as a matter of urgency. No communication had been received and so a day later, an email was sent imposing the CMC date as 6 February at 14:00 hours.
20. No response had been received about the attendance at the CMC from the appellant by 5 February. The pre-CMC note was sent along with an agenda. The CMC agenda included the basic outline of the proposed meeting. The pre-CMC note fleshed that out, explaining more about what the meeting would need to discuss. Important within this is that clarity was sought about the grounds of appeal, what evidence would be relied upon particularly by the Appellant who had still not provided a statement of case and highlighting that it would be necessary to review whether the case needs to proceed by way of an inquiry.
21. The CMC took place at the appointed time. The appellant was represented by Counsel, their 2nd representative, who explained that they had been instructed on a direct access basis rather than through an intermediary agent. In terms of the scope of the appeal, the appellant's representative confirmed that a ground (a) appeal was not being pursued giving the reasoning that a fee had not been paid. I questioned that as I thought that I had seen confirmation that the fee had been paid. However, the CMC continued on the basis that the appeal would proceed on grounds (b), (c) and (f) with the appellant's representative confirming that there would be limitations in terms of the units these grounds of appeal would relate to and that consequently the appeal under ground (f) would also be a limited case.
22. The appellants representative suspected that the matters raised in grounds (b) and (c) would be contentious and that the Council may want to test the evidence by way of cross examination. The programmed 2 days they felt were realistic given a narrow factual dispute and short submissions following that. He also felt that I as the inspector, would need to assess the credibility of the witnesses which would not be effectively achieved by way of written representations or a hearing. The Council agreed.

23. Importantly, at the CMC all parties agreed a bespoke time-table for the submission of the appellant's statement (by 14 February), proofs of evidence (5 March), rebuttal proofs (12 March) and time estimates for witnesses (12 March). Although the Council did express concerns about the time-table this would allow 2 weeks for the preparation of their proofs. This was the minimum period that could reasonably be given to the Council without having to allow the inquiry to proceed as arranged, without delay.
24. After the CMC, I double checked the files and did indeed see that there had been a communication indicating that a fee for the ground (a) and deemed planning application had been paid. Before sending out the note following the CMC, the case officer emailed the parties about the fee and it was confirmed by the Council that they had received it. The case officer made it clear that if the ground (a) and deemed application were not being pursued, that it would be necessary to formally withdraw them, otherwise a deemed application would remain to be determined. At the CMC the appellant's representative had made it very clear that ground (a) wasn't being pursued but that does not formally withdraw the deemed planning application. A post CMC note was sent out to the main parties to confirm what had been discussed and agreed as well as referring to the need for clarity about the deemed planning application.
25. By 12:38 hours on 14 February 2025 (the extended deadline for their statement of case), an email was received direct from the appellant to the case officer asking "*the Council*" if an adjournment would be possible as "*the person responsible for the property, who holds the evidence, is currently away.*" No indication was given about the delay or when that person would return. This email was forwarded to the appellant's second representative, who thanked us for forwarding it, confirming that they were not aware that the appellant was emailing us and stating that they did not have any instructions from the appellant. They also said that they didn't know if the appellant would be instructing them.
26. On 17 February I wrote a note out to the main parties due to another deadline for the appellant's statement of case having been missed. I made it clear that I was very concerned about the appellants failure to follow the procedures for this appeal, which was unfair on the Council in their preparation of their Proofs of Evidence. The Council already had a much more limited amount of time to prepare their proofs of evidence and submissions for the inquiry than is normally allowed for. There was also a need to re-assess whether the inquiry procedure was appropriate and we had not been given any information to know whether an adjournment would be justified. The appellant's lack of representation was also of concern with respect to the ongoing conduct of the case.
27. The note also included details of s176(6) of the Act which had previously been summarised in the start-date letter on 25 November 2024 and which I have set out above. I therefore gave formal notice to the appellant under these provisions, that they must submit their Statement of Case by 17.00 hours on Monday 24 February 2025 (1 week later). This step was necessary for the expedition of the appeal and so the note warned that if the Statement of Case were not submitted by then, the appeal would be dismissed and the enforcement notice upheld.
28. A third representative for the appellant contacted the case officer firstly at 15:53 on Monday 24 February 2025 confirming that they had just been instructed and that they hoped to have their client's statement ready "in good time before the Hearing

at the end of next month” and apologising for not being able to get the paperwork together in time for the deadline. It is not stated whether or not they had been informed about the deadlines having already been altered to accommodate the appellant. A further email followed at 16:24 saying that attached was “evidence” from their clients and that the “statement should be ready and sent within a week.” The 2 spreadsheets attached contained names, flat numbers, reservation numbers and dates with no other context or information provided.

29. The Procedural Guide: Enforcement notice appeals – England, Updated 12 September 2024 (enforcement procedural guidance) states that the statement of case:
 - must include a list of documents, maps and plans the party intends to rely on
 - should describe, but not contain, the evidence
 - should, in the appellant’s statement, refer to any policies or other documents not referred to by the LPA but considered to support the appellant’s case
 - should not, normally, in the LPA’s statement introduce additional policies, except where the local policies have changed since the notice was issued
 - should set out both the planning and legal arguments which a party intends to put forward at the inquiry
 - should cite any statutory provisions and case law they intend to use in support of their arguments
 - should focus on the areas of differences - as the areas of agreement will be in the statement of common ground
30. The information did not therefore constitute being a statement of case in line with the above enforcement procedural guidance. The appellants own representative stated that they would in future submit a statement of case, so clearly what was sent by the direction deadline was not considered by them to be a statement of case. Furthermore, it had still not been clarified by this time, whether or not the deemed planning application was continuing or being withdrawn.
31. A letter was sent by email the following day to the appellant’s new agent. The letter confirmed that the spreadsheets did not provide sufficient indication of the appellant’s case to enable the Council to prepare their case and that by their own admission, they did not constitute a statement of case in line with current guidance. A purpose of that letter was therefore to prevent abortive work being carried out by the appellant.

Conclusion

32. Both main parties had extended deadlines for their statements of case and the Council adhered to that. The appellant’s incomplete grounds of appeal indicated that they had evidence to counter the allegation on the enforcement notice. However, it has still not been explained what that evidence is, as their statement had not been submitted by the time of the third extension of the deadline of 24 February 2025, 6 weeks after the originally extended deadline. The enforcement procedural guidance confirms that the timetable for appeal procedures must be kept to and also draws attention to the s176(6) power.

Notwithstanding this, some leniency was given to the appellant but there has been nothing provided by them to indicate why further time was necessary or that they would comply with further extensions of deadlines if given. None of this has been assisted by the changing of agents. To extend the deadlines for the appellant any further would be procedurally unfair to the Council in preparing their case. I also have little confidence in these circumstances that further extensions of time to submit information would be complied with by the appellant.

33. It is in the interests of good planning to provide greater certainty to those participating in the appeals process by, amongst other things, providing required information by procedural deadlines. It is also important to ensure that breaches of planning control are resolved promptly. In this case it is clear that the appellant has been responsible for undue delay in the progress of the appeal. Hence it is appropriate, having regard to the purposes of s176(6) that the appeal be dismissed and the notice upheld.

Andy Harwood

INSPECTOR