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## Appeal Decision

Hearing held on 14 April 2015

Site visit made on 14 April 2015

**by Katie Peerless Dip Arch RIBA**

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

**Decision date: 28 April 2015**

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**Appeal Ref: APP/U5360/C/14/2223622**  
**17 Manor Road, London N16 5BQ**

- 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 the Directors, Yeshiva Gedolah Torah Veyirah Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
  - The Council's reference is 2013/0819/ENF.
  - The notice was issued on 11 July 2014.
  - The breach of planning control as alleged in the notice is operational development consisting of the unauthorised erection of four single storey portacabins structures at the site to facilitate the material change of use as a school (D1 Use).
  - The requirements of the notice are: (1) Remove from the site the four single storey portacabins structures that facilitate the material change of use as a school and any associated fixtures and fittings. (2) Make good all damage resulting from compliance with the other requirements of the notice. (3) Remove all waste, materials, equipment and debris from the Site resulting from compliance with the requirements in paragraphs 5(1) to (3) of the notice.
  - The period for compliance with the requirements is four (4) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The enforcement notice is varied by the omission of the words '*to facilitate the material change of use as a school (D1 Use)*' from the allegation and '*that facilitate the material change of use as a school*' from requirement (1) and corrected by the change of (3) to (2) in the text of requirement (3). Subject to these variations and correction, the appeal is allowed, the enforcement notice is quashed and temporary 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 erection of four single storey portacabins structures on land at 17 Manor Road, London N16 5BQ referred to in the notice, subject to the conditions attached as Annex 1 to this Decision.

### Main Issues

2. I consider that the main issues in this case are the effect of the development on :
  - (i) the living conditions of occupiers of neighbouring properties with particular reference to noise and disturbance and
  - (ii) the character and appearance of the surrounding area.

### **Procedural matters**

3. At the Hearing the Council asked me to correct the enforcement notice by substituting (2) for (3) in requirement (3). This can be done without injustice to either party.
4. The Council also noted that it raises no objection in principle to the present use of the site and suggested that the enforcement notice could be amended to remove the references to the material change of use to a school, in order to make clear that it is only the operational development in the form of the portacabins to which it objects. I consider that this would be a more accurate reflection of the reasons why the Council considered it expedient to issue the notice and I will amend the allegation and requirements accordingly.
5. Following on from this, the appellants' agent noted that the fee that his clients had paid in order to have the appeal on ground (a) considered was based on that required for a change of use, not for the operational development consisting of the cabins, which would have been considerably less. The operational development will now be the subject of the deemed planning application but I am unable to authorise any variation in the fees paid and advised Mr Ormonde, the appellants' agent, that, following the issue of this Decision, he would need to discuss the matter directly with the Planning Inspectorate and the local planning authority.

### **Site and surroundings**

6. The appeal site is a parcel of land in an area of mixed uses. There are residential properties on each side of it and commercial properties with residential units above on the opposite side of the road; to the rear of the site is a cemetery. On the road frontage the site is largely hidden behind high fencing and planting, with full height solid gates at the single pedestrian and 2 vehicular entrances.
7. Portacabin type structures on the site have, apparently, been used in the past as a depot for a cleaning company and prior to that as offices for the London Borough of Hackney. At present, the site contains 4 single storey cabin type structures, 3 of which have been brought onto the site from elsewhere to replace others that were previously located on it. The fourth is, I am told, one of those originally on site and it has now been partially re-clad with UPVC boarding. There is also a metal storage shed, of some age, which appears to date from the original use of the site by the Council. From a comparison of aerial photographs, the area of the site now covered by cabins is similar to that seen in 2002 and slightly more than in 2009.
8. The cabins are in use a *Yeshiva* or Talmudical College for about 100 young men of the Orthodox Jewish faith, between 16 and 20 years old. The site is used with varying degrees of intensity with occasional instances of all night occupation and regular evening sessions. The original cabin (1), closest to the road contains the refectory and kitchen, the adjacent cabin (2) contains 2 lecture rooms, cabin 3 forms the vestibule to cabin 4 and also contains a cloakroom and small office and cabin 4, at the rear of the site, is the main lecture and study room, containing bookshelves, tables and chairs where the students mainly study.

## **Planning history**

9. There have been a number of applications for planning permission relating to the site in the past but that of most relevance to this appeal is the grant of permission<sup>1</sup> for a primary school for 300 children in 2007. This was for a part 3, part 4 storey building with a lower ground floor and basement. A condition attached to the permission limited the hours during which the outside playground could be used. It has been agreed that this permission was not implemented within the given time scale and has now lapsed.

## **Reasons**

10. The Council is concerned that the cabins on the site are not suitable for the use to which they are being put. It considers that their insubstantial construction has led to the complaints received from neighbouring occupiers concerning noise and light pollution from external floodlights and that the appearance of the structures are detrimental to the character and appearance of the surroundings.

### *Living conditions*

11. The main concerns about the use of the cabins have been noted above. However, the appellants have produced a report from consulting acoustic engineers that indicates that the highest levels of noise generated by the activities within the site would not be greater than the ambient background noise and would not exceed the recommended levels when experienced at the nearest sensitive receptors, the residential properties at 19 Manor Road to the west and 1 Listria Park to the east.
12. The Council has not produced any evidence to counter these findings and it was confirmed at the Hearing that it did not dispute the methodology of the noise survey. However, I note that no measurements were taken after 15.26 hrs and that the report assumes that there are no activities that would generate noise carried out on the site after 23.00 hrs.
13. The appellants have nevertheless confirmed that this is not, in fact, correct. I was told that prayer sessions involving groups of students can take place during night time hours both inside and outside the cabins. It may be that these do not last for long periods but they are nevertheless taking place at times when the background noise levels are likely to be lower than during the day and may therefore be more audible to neighbours at these times. It must be the case however that, during the daytime, the current use is less intrusive and noisy than if the site was occupied by 300 primary school aged children using an outside playground, as was envisaged in the last planning permission.
14. I note that there have been no noise complaints received that have resulted in the involvement of the Council's Environmental Health department, which would be the body responsible for responding to such concerns. However, I consider that it would be a sensible precaution to require that the windows, which are double glazed, are kept shut during the evening and night times when the cabins are in use. The cabins are equipped with air conditioning units that would allow their use without the need to open the windows. This could be the subject of a planning condition, as could the prevention of the use of any amplified sound. The concerns about the external lighting could also be overcome by the imposition of a condition.

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<sup>1</sup> Ref: 2007/0273

15. Neighbours have concerns that traffic to and from the site would also prove disturbing but the appellants confirmed that the great majority of students come to the site on foot. The *Yeshiva* is serving the local community, many of whom do not drive, and I have been given no firm evidence to indicate that the current use of the site has increased traffic movements. I therefore see no reason to doubt this statement.
16. In conclusion, I consider that any potential for noise and disturbance to the occupiers of neighbouring properties could be satisfactorily dealt with by conditions attached to a planning permission.

#### *Character and appearance*

17. I note that there have been cabins of some description on the land for many years and those that are currently in use are, with the one exception, second-hand, but newer, replacements for the originals. The one retained unit has, as previously noted, had cladding added to some elevations and this has improved its appearance somewhat. Although of no architectural merit, the cabins are functional and of reasonably sound construction.
18. Nevertheless, the units that are recent additions to the site do not, in my view, meet the high quality design standards sought by the National Planning Policy Framework in paragraph 17 or policy 24 of the London Borough of Hackney Local Development Framework Core Strategy 2010. They have a utilitarian appearance that contrasts unfavourably with the permanent development nearby and detracts from the surroundings. Although the cabins will only be visible from the street when the gates to the site are open they can still be seen from private viewpoints. It would not, therefore, be appropriate to grant a planning permission that would allow them to remain on site indefinitely, as this would conflict with the aims of these policies and miss an opportunity to improve the visual qualities of the area.
19. However, given that the replacement of the original cabins has not resulted in any significant additional harm to the overall appearance of the site, I find that, whilst the replacement of the cabins was unlikely to have been a scheme for which planning permission would have been granted, had it been applied for prior to the operational development being carried out, it would not necessarily now be disproportionate to allow them to remain for a limited period.
20. I have also taken into account the need for the community to have premises in which they can site this *Yeshiva* and the difficulties they have encountered in finding suitable accommodation. The appellants explained that, in the longer term, their intention is to replace the cabins with permanent buildings, once funding is available, so that the college will have a secure home.
21. It seems to me that, given the cabins have a limited life span due to their semi-permanent nature and will need to be replaced in the foreseeable future, it would be reasonable to allow them to remain on site for a defined period. The harm due to their inappropriate appearance would consequently be limited and a temporary planning permission would give the appellants the opportunity to submit a planning application for a replacement scheme and raise the funds to progress it.

## **Conclusions**

22. The Council expressed the view that it would prefer to see an extended period for compliance to be granted for the removal of the cabins rather than a temporary planning permission. I understand that it would be easier to secure compliance with the enforcement notice than to have to start again with enforcement action should the cabins not be removed at the end of the authorised period.
23. However, I consider that the benefits of securing reasonable living conditions for the neighbouring occupants through conditions attached to a planning permission, would outweigh the inconvenience to the local planning authority of having to undertake the more complicated procedure of further enforcement action if required, should the development not be removed at the end of the temporary period. Such conditions could not be imposed if the compliance period were to be extended under the appeal on ground (g).
24. I consider that a period of 3 years would be sufficient to allow the appellants to make arrangements for the replacement of the cabins with more permanent structures to accommodate the facility but, in my opinion, this is too long a compliance period to apply to an enforcement notice.
25. I note that the appellants consider that a 5 year period would be needed to raise funds for the new school and obtain planning permission for it. However, if the intention is to go forward with a facility of a similar size and function, I see no reason why the planning process could not begin as soon as funds for architectural services are available and this would give the Council confidence that there was a firm commitment to replace the existing development as soon as possible. To allow a longer period would not instil the sense of urgency needed to drive the project forward and deliver a satisfactory scheme.
26. Therefore, for the reasons given above I conclude that the appeal should succeed on ground (a) and a temporary planning permission will be granted. A consideration of the appeal on ground (g) forms part of my reasoning in coming to this conclusion.

*Katie Peerless*

**Inspector**

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Alvin Ormonde	Planning and Property Management Services
Mr Y Rosenthal	Appellant
Mr E Rothbart	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Marcin Manikowski	Enforcement Manager, London Borough of Hackney
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### INTERESTED PERSONS:

Mr Asher Gratt	Member of local community, supporting the appellants
Mr Isaac Leibowitz	Member of local community, supporting the appellants
Mr Leopold Posen	Member of local community, supporting the appellants

## **DOCUMENTS**

- 1 Letter of notification and circulation list
- 2 Extract from The London Plan 2015
- 3 Extract from the National Planning Policy Framework
- 4 Notes of Mr Gratt's statement
- 5 Extract from *R v Leominster DC ex p. Potheary* [1997] 3 PLR 91
- 6 Delegated authority for enforcement action

## **Appendix 1**

### **Conditions to be attached to the planning permission**

- 1) The permission shall be for a limited period, being the period of 3 years from the date of this decision. At the end of this period the portacabins hereby permitted shall be removed and the land restored to its former condition before the development took place or in accordance with a scheme to be submitted to and agreed by the local planning authority before the due date.
- 2) The windows of the portacabins hereby permitted are to be kept shut between the hours of 2000 and 0700.
- 3) Within 2 months of the date of this decision a scheme for the external lighting for the site, detailing the light levels generated and including the hours of operation and a timetable for its installation, is to be submitted to the local planning authority for approval. The scheme is to be implemented as approved.
- 4) No equipment for amplifying sound is to be used at any time in the portacabins hereby permitted.