

Appeal Decision

Site visit made on 24 January 2017

by John Whalley

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

Decision date: 31 January 2017

Appeal ref: APP/A2335/C/16/3156991

Mayfair Residential Home, Marine Road East, Morecambe LA4 5AR

- The appeal was made by Mayfair Residential Home under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Lancaster City Council.
- The notice was issued on 18 July 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the siting of a container for storage of a biomass boiler and associated flues.
- The requirements of the notice are to:
 - i remove the storage container from the land.
 - ii reinstate the land to its former condition.
- The period for compliance with the requirements is three months.
- The appeal was made on ground (c). An appeal on ground (a) was added later.

Summary of Decision: The appeal succeeds. Conditional planning permission is granted to retain the biomass boiler container.

Appeal project

1. The appeal premises, Mayfair Residential Home, is a former hotel on the sea front at Morecambe that has been converted to a residential home for 45 elderly residents. The enforcement notice was issued in respect of a large white painted shipping container that houses 2 biomass central heating boilers, their fuel bunkers and associated pair of flues that has been installed at the rear of the 4/5 storey building.

The appeal on ground (c)

2. The appeal on ground (c) contends that planning permission was not required for the works described in the enforcement notice.
3. The Appellants said the boiler housing container complied with permitted development concessions because it was in a commercial area; it was a temporary building; it was less than 4m high and it occupied less than 50% of the property curtilage. No explanation of those assertions followed, either in the appeal statement or in final comments on the appeal. The burden of proof in a legal ground of appeal such as this lies with the appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is authority for that position. That is, it is for an

appellant to show why planning permission was not required for the alleged breach of planning control.

4. No case was made to show that the biomass fuel storage container was, for example, a temporarily sited chattel that might not have needed planning permission for its placing on the land. Nor was it shown the siting of the container did not amount to operational development. Section 55(1) of the Act sets out the meaning of development. It says: "....., *"development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*". Section 55(1A) says: *For the purposes of this Act "building operations" includes —*
 - (a) demolition of buildings;*
 - (b) rebuilding;*
 - (c) structural alterations of or additions to buildings; and*
 - (d) other operations normally undertaken by a person carrying on business as a builder.*

The work required to site the container on prepared, albeit minor, foundations, to connect it electrically and with heating water pipes to the main building was more than insignificant. It would have required the services of a builder or suitably qualified persons.

5. The comments about the height of the installation and the proportion of the curtilage covered by it appear to be misplaced references to those parts of the Town and Country Planning (General Permitted Development) Order, (the Order), that deal with dwellinghouses, not with a residential care home. A dwellinghouse is a Class C3 use as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended). A residential home for people in need of care is a Class C2 use to which different concessions in the Order apply.
6. Part 1 to Article 3, Schedule 2, dealing with permitted development rights in the Order at Class E – permits, subject to conditions and limitations, the development of any building or enclosure, swimming or other pool or a container used for domestic heating purposes for the storage of oil or liquid petroleum gas. However, that concession only applies to domestic dwellings. Part 4 at Class A – permits the provision of buildings, moveable structures, works, plant or machinery. But that only applies where they are required temporarily in connection with and for the duration of operations carried out on the land. That does not apply in the present instance, as the container is not a temporary structure and was not placed on the land in association with other operations on the land or building.
7. Nothing was said that showed that planning permission was not required for the installation of the container. Its siting amounted to a breach of planning control as set out in the enforcement notice. The appeal on ground (c) fails.

The appeal on ground (a)

8. The appeal on ground (a) asks that planning permission be granted for development described in the enforcement notice allegation. That is, for the retention of the container and its fittings. The decision turns on whether the container and flues have an unacceptably harmful effect on the appearance of the immediate area.

9. The appeal shipping container has been installed on the hard surfaced service area at the rear of the residential home building, some 8m out from the rear façade. The container is 12m long, 2.4m wide and 2.6m high, or thereabouts. Two flues about 0.3m in diameter and just under 3m tall are fitted on the roof. The container can be readily seen along the service road that runs to the rear of residential home building fronting Marine Road East and beyond, off Royal Road. The service road also serves a number of other buildings that front Marine Road East. Views from Royal Road to the appeal container are limited from the south by the garage to the house at No. 2 Royal Road and by the Mayfair Residential Home building from the north.
10. From the service road's access on to Royal Road, the container is seen against the backdrop of the uncompromisingly utilitarian fire escape to the residential home and the varied mix of additions, extensions and fire escape structures attached to the rear of the row of buildings further down the service road. The effect of those features was acknowledged by the Council in saying, "*... that the rear of the application site and that of other properties in the row is already somewhat unsightly with fire escapes, awkward extensions and antennae.*". Those rather stark structures along the rear service road limit any adverse effect the appeal container has on the appearance of its immediate surroundings.
11. The Council said the 2 shiny boiler flues that extend to a total height of 5.5m added to the incongruity of the installation. The flues have since been painted the same shade of white as the container, matching that on the rear wall of the Mayfair Residential Home. That, in my view, alleviates some of the Council's objection.
12. The Council said the appeal installation adversely affected the occupiers of the nearest house, No. 2 Royal Road. Alterations and extensions to the north side of No. 2, facing towards the container, have provided more views in that direction. But the house's main windows are, it appears, those at the front facing onto Royal Road. Otherwise, the container will be seen against the unprepossessing rear of the residential home over No. 2's garage, the access roadway and the service area around the container.
13. The Council also said the outlook from main windows of other nearby properties, including those at Nos. 21/21A Dallam Avenue to the south and in the 4 storey flats on the opposite side of Royal Road were impaired. The container and its flues would be difficult to screen. I agree that a small number of residential properties would have a view or partial view towards the appeal container. But the harm caused to the outlook of those properties that were of concern to the Council, is, in my view, minimal, especially against the pre-existing background to the container. My conclusion is that planning permission should be granted to retain the heating installation container at the rear of the Mayfair Residential Home, subject to a condition requiring additional planting on the northern side site frontage to Royal Road to improve screening of the service area to the rear of the Home.
14. The Council referred to residential amenity worries about odour. Such concerns were not reflected in either of the reasons for their refusal of planning applications 14/01049/FUL or 16/00566/FUL for the installation of the container. Nor were those concerns enlarged upon in their appeal statement. The Council's senior environmental health officer, in an advisory note, implied that the flues should discharge above the residential home's roof. The Appellants, in their final comments, said the issue of the flues emissions had been previously

discussed, investigated and agreed. They disputed that the existing layout infringed relevant standards. They claimed that the technical suitability of the biomass boilers installation inside the appeal container and the adequacy of the flues had been determined. The Council had not shown otherwise. On the evidence put before me, there is no cogent environmental amenity objection to permitting the appeal.

15. The appeal on ground (a) succeeds. Conditional planning permission is granted on the application deemed to have been made to site the appeal container for the storage of a biomass boiler and installation of associated flues.

FORMAL DECISION

16. The appeal succeeds. The enforcement notice is quashed. Planning permission is granted on the application deemed to have been made for the siting of a container for storage of a biomass boiler and associated flues, subject to the following condition:
 1. A scheme for planting along the northern side site frontage to Royal Road shall be submitted to and approved in writing by the local planning authority. The scheme shall be submitted on or before the expiry of 2 months from the date of this decision. The planting scheme as approved shall be implemented within one month of approval of the scheme by the local planning authority.

John Whalley

INSPECTOR