
Appeal Decision

Site visit made on 19 July 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 25 July 2017

Appeal Ref: APP/G4240/C/16/3165922

Land at rear of Broadoak Road Post Office, 6 Broadoak Crescent, Ashton-under-Lyne, Thameside OL6 8QE

- 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 Mr H Parekh against an enforcement notice issued by Tameside Metropolitan Borough Council.
 - The enforcement notice was issued on 16 December 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of the land for the stationing of a metal container used as additional storage space for the Class A1 shop business. The container is in the approximate position marked with a cross 'X' on the attached plan.
 - The requirements of the notice are:
 - (i) Remove the metal storage container from the land.
 - (ii) Remove all other materials and waste arising from compliance with requirement (i) above and leave the land in a clean and tidy condition.
 - The period for compliance with the requirements is 1 (one) month after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

The notice

2. The plan attached to the notice shows the land to which it relates as including the post office, but the notice specifies "land at rear of" these premises. As no injustice would result to the parties I will correct this discrepancy by substituting a plan that excludes the post office, under powers contained in s176(1)(a) of the 1990 Act.

The appeal on ground (a) and the deemed planning application

Main issues

3. The main issues are the effects of the development on: firstly, the character and appearance of the area; and secondly, on living conditions of occupiers of neighbouring properties with reference to any loss of outlook.

Character and appearance

4. The appeal site is a car park and servicing area to the rear of a post office, incorporating a mini-market, that fronts Broadoak Crescent. The car park is
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accessed off Broadoak Road. The post office is at the end of a small shopping parade in a mainly residential area. 2 Poplar Grove adjoins the appeal site to the east and, to the north east is 100 Broadoak Road. Both these semi-detached properties share boundaries with the appeal site which together with the southern boundary, consist of close boarded timber lap fencing above concrete panels, some 1.8m tall.

5. The unauthorised metal container is about 2.4m wide, 6m long and 2.4m high, located in a corner of the appeal site adjacent to and about 1m higher than, the south and east boundary fencing. It is painted a recessive green colour and as a temporary structure it might be argued to have a less objectionable presence in its surroundings. It is however clearly visible from Broadoak Road and its upper parts are also seen from Poplar Grove. Moreover complaints as to its appearance were made by nearby residents in February 2016 and the container has remained on site since then, being increasingly experienced as a permanent structure. The container is of a type normally used for industrial storage, however in this mainly residential area its design, including its size, bulk and materials, gives it an unduly incongruous appearance in the townscape that undermines the character and appearance of the area.
6. The harm caused is substantial and contrary to Policies C1 and S9 of the Thameside Unitary Development Plan 2004 (UDP), in that insufficient attention is paid to the relationship between the container and its setting, and its design and use of materials do not complement or enhance local character.

Living conditions

7. The proximity of the container to the boundaries of 2 Poplar Grove and 100 Broadoak Road diminishes the outlook from these properties. Their windows are at varying angles of obliqueness to the container, but several appear to serve habitable rooms. The container is in the field of vision from these windows as well as from private rear garden areas. Its use is low key and other harm is unlikely to result to living conditions of nearby residents. However, that the dwellings are close to a service yard does not justify the loss of outlook from the permanent siting of such a large, industrial-type container.
8. I find on this issue that the continued presence of the container is causing unacceptable harm to the living conditions of occupiers of adjacent dwellings by reason of a poor outlook from those properties. The harm is contrary to the aims of UDP Policies C1 and S9 which include the protection of neighbouring properties from unacceptable impacts that would include loss of outlook.

Other matters

9. The appellant's business is a valuable facility to the local community. At present the container provides additional storage for the retail operations. Although he says a permanent extension to the post office may be considered, the appellant is vague as to how or when that is likely to materialise. In the meantime the container, which has been present on site for well over a year, continues to have a harmful influence on the appearance of the area and views from nearby houses and gardens. I am not therefore persuaded that granting permission for a temporary period of five or three years, as is requested, would give tangible benefits that would override the harm.

10. A condition might require screening of the container by additional planting and fencing, but this would only consolidate its permanent character and would not in my view effectively redress the loss of outlook experienced by neighbours.
11. The floorspace of the mini-market is fully used and I accept that some additional storage may be beneficial to the business. Internally, part of one side of the container is fitted with shelving, whilst the other side contains a few stacked chairs and a trolley. I saw a few packs of soft drinks and alcohol on the shelves and floor. Of course deliveries might have been imminent that would have filled up the container. However there is no robust evidence that the size of the container is indispensable to run the business efficiently.
12. It is suggested that UDP Policy S5 is complied with but it is not relevant here as it deals with changes of use of retail premises to other uses unconnected with the existing retail function.
13. The deemed application would be supported by the aim in the National Planning Policy Framework to assist in meeting the business needs of an area, a core planning principle set out in Paragraph 17. Overall however the economic and social benefits to the business and the local community, although of some weight in favour of the appeal, would not be outweighed by the environmentally unsustainable nature of the development. In this respect the container fails to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings, expectations that are also set out in Paragraph 17 of the Framework.

Conclusion on ground (a)

14. For the above reasons and considering all other matters raised, the appeal on this ground fails and planning permission will be refused.

Ground (f)

15. The issue under this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The notice indicates that its purpose is to remedy the breach of planning control in accordance with s173(4)(a) of the Act by requiring the complete removal of the unauthorised development.
16. The alternative lesser steps that are suggested, that is screening by way of fencing and landscaping, have been considered under ground (a). They would not serve to completely remedy the breach of control. In the circumstances it is a necessary step and not excessive to require the removal of the container.
17. Therefore the appeal on this ground does not succeed.

Ground (g) - that the time given to comply with the notice is too short

18. The appellant requests that the period for compliance be extended to six months which is considered more appropriate to enable him to reorganise the existing premises. The container itself however can be easily removed from the site by a suitable commercial vehicle and I see no reason why this could not be accomplished within a day. The period for compliance of one month would in my view be adequate within which to make plans for, and execute its removal. It would also strike a reasonable balance between the eventual need

to reorganise stock or layout of the premises, and the need to prevent further harm being caused by the continued presence of the container.

19. The appeal on ground (g) therefore fails.

Overall Conclusion

20. For the reasons given above I conclude that the appeal does not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

22. Subject to this correction the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR

Plan

This is the plan referred to in my decision dated: 25 July 2017

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Scale: Not to Scale

