



Appeal Decision

Site visit made on 17 June 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2020

Appeal Ref: APP/Z3635/C/19/3240021 648 London Road, Ashford TW15 3AW

- 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 Zain Saleem on behalf of Surrey Motors against an enforcement notice issued by Spelthorne Borough Council.
 - The enforcement notice was issued on 27 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from use for car parking for a car sales business and use of a porta cabin as an office, to car parking for a car sales business and use of a porta cabin as an office, and the siting of a second porta cabin and its use as an office.
 - The requirements of the notice are:
 - (i) Permanently remove the second porta cabin from the land (cross hatched for the purposes of identification on the plan attached).
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.
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Decision

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

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

2. The main issues are the effect of the development upon the living conditions for the adjoining occupiers of 1 Barry Terrace, Orchard Way with particular regard to outlook, privacy and noise and disturbance.

Background / Preliminary

3. The appellant states that the portacabin is a temporary structure and not a building. However, it is a portable building which does not appear to have a fleeting character. The appellant also explains that it is used in connection with the existing car sales business and has existed for some time. As such, I do not consider it is a temporary structure.

4. There is no dispute between the parties that the lawful use of the planning unit of the site is for car parking in connection with the car sales business and use of a portacabin as an office. The evidence indicates that a single portacabin has been present on the appeal site since approximately 2008 and in 2016¹ and is lawful.

Outlook

5. The second portacabin has a utilitarian appearance and is located immediately adjacent to the small rear garden and residential property of No 1 Barry Terrace, Orchard Way. The portacabin rising above the existing side boundary fence appears as a visually intrusive feature in the outlook from the rear garden of this adjacent property, harmfully reducing the sense of openness experienced by occupiers of this property. The appellant states that a van has a taller height than the portacabin. Be that as it may, I do not consider that this justifies the harm caused resulting from the placement of the portacabin.
6. I therefore find the development results in harm to the living conditions for existing occupiers of 1 Barry Terrace, Orchard Way with particular regard to outlook, which is contrary to Policy EN1 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document, 2009 (CS). This requires new development to achieve a satisfactory relationship to adjoining properties avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or overbearing effect due to bulk and proximity or outlook.

Privacy

7. Both main parties and third parties have submitted their views on the effects of the portacabin on privacy/overlooking. From my examination of the detailed material submitted, I agree with the appellant that the development does not have a harmful effect in relation loss of privacy and overlooking, owing to the existing height of the boundary treatment with No 1 Barry Terrace, which prevents any direct views into this adjacent property and rear garden.
8. I therefore conclude that the development does not harm the living conditions for existing occupiers of 1 Barry Terrace, Orchard Way with regard to privacy. In this respect I find no conflict against CS Policy EN1, which seek the aforesaid aims.

Noise and disturbance

9. The Council and third parties also raise concerns that, in the absence of any planning application and noise reports, the second portacabin result in intensification of the use of the site, with increased 'comings and goings' and associated increase in noise and disturbance to the adjacent occupiers at No 1 Barry Terrace. The rear garden and windows at the rear of this property are located in close proximity to the portacabin.
10. However, prior to the placement of this second portacabin, the site would have been used for the parking of cars in connection with the existing car sales business, operating within similar hours of use, which are 09:00 to 17:00 Monday to Saturday. As such by enclosing this outside parking area and reducing the area available for the parking of cars, the portacabin would be

¹ Taken from paragraph 6.3 of the Council's appeal statement.

expected to result in a reduction of the noise and disturbance experienced by neighbouring occupiers.

11. The second portacabin is an ancillary office with only one employee and a small kitchen for staff use only. I also observed that the site forms part of wider commercial site, which is in use as a car sales business, car mechanic and a car wash, where machinery and high powered jets are likely to be in use frequently. The site is located off the busy A30 London Road, where vehicular traffic is busy throughout the day, and that the hours of use of the business fall broadly within the hours of use of the adjoining commercial uses of the car mechanics and car wash.
12. Therefore, owing to the size of the portacabin, and in the context of the existing commercial uses nearby combined with the hours of use of the business, I am not convinced that the portacabin has resulted in any significant increase in noise and disturbance to neighbouring occupiers of 1 Barry Terrace.
13. Therefore, I conclude that the development has not resulted in harm to the living conditions of the neighbouring occupiers of 1 Barry Terrace, with particular regard to noise or disturbance. In this respect, I find no conflict against CS Policy EN1, which seek the aforesaid aims.

Other matters

14. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the likely effect on the existing living conditions of adjacent occupiers with regards to outlook.
15. I recognise that the portacabin provides economic benefits to the business. However, these economic benefits do not justify harm identified above. Nor do I consider that the lack of harm in relation to noise and disturbance and privacy overcomes the harm in relation to outlook. Comments made by third parties against the unauthorised works have been taken into account but do not alter the conclusions reached in this decision. There are therefore no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Conclusion

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR