



Appeal Decision

Site visit made on 26 October 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/B1740/C/21/3276412

75 Jacobs Gutter Lane, Totton, Southampton SO40 9FU

- 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 Ms Joanne Joyce against an enforcement notice issued by New Forest District Council ('the Notice').
 - The enforcement notice, numbered EN/20/0212, was issued on 27 April 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of an outbuilding, consisting of a shipping container which has been adapted to include timber cladding, a pitched roof, uPVC windows and French doors and which is situated forward of the principal elevation of the dwelling house, in the approximate position marked with a black cross on the attached plan.
 - The requirements of the notice are: 1. Remove entirely the shipping container from the front garden; and 2. Remove all materials and debris accumulated as part of taking step 1.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and 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 an outbuilding, consisting of a shipping container which has been adapted to include timber cladding, a pitched roof, uPVC windows and French doors at 75 Jacobs Gutter Lane, Totton, Southampton SO40 9FU as shown on the plan attached to the notice and subject to the following condition:

1. The building hereby approved shall only be used for purposes incidental to the use of 75 Jacobs Gutter Lane.

Procedural Matter

2. In its Questionnaire bundle, the Council forwarded a copy of Policy CS2 from its now superseded Core Strategy, but not a copy of Policy ENV3 of the New Forest District Council Local Plan Part One: Planning Strategy, Adopted 6 July 2020, ('LP') that is referred to in the Notice. I queried this with the Council, and it confirmed that this was an error and that Policy CS2 had no bearing on the appeal. It submitted a copy of LP Policy ENV3 and copied the Appellant in, as requested. Given my decision on the appeal, I did not ask the Appellant for comments on Policy ENV3.

Ground (c)

3. An appeal made under this ground is that those matters alleged in the Notice, (if they occurred), do not constitute a breach of planning control. The onus lies with the Appellant to demonstrate their case on the balance of probability. Following the *Gabbitas*¹ judgement, evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
4. The Appellant states that as what is on the site is a shipping container, which is, by definition, a self-contained structure that is readily transportable and can be moved from place-to-place as required. Furthermore, as it is not permanently fixed to the ground, it is a chattel. The Appellant further notes that the Council does not allege any material change of use of the land on which it stands.
5. Case Law² has identified three primary factors as being decisive in determining whether something is a building: size, degree of permanence and physical attachment. None of the factors is necessarily determinative of itself, and an assessment will need to balance the findings for each.
6. At the heart of what is on site is a relatively small steel container, which has been clad in timber with a low-pitched roof added. A French door and a window have been inserted in two of its elevations. Although I did not enter it, I saw through the windows that the interior appeared to have been lined with plasterboard that had been skimmed and painted.
7. The timber cladding reaches ground level, with the result that it was not possible for me to be sure whether it is physically fixed into the ground. Following the *Gabbitas* principles, as the Appellant states that it has not been so fixed and that the Council provides no evidence to the contrary, I take this to be the case.
8. However, I have not been told that it has been moved since being sited, nor whether the cladding would need to be removed in order to move it. I could not be sure of the latter point at my site visit. Even if it were the case that it could be moved as it stands, by reason of its size and weight this would require the use of some form of crane. This indicates that it is not readily transportable. The works that have been undertaken – its cladding, the insertion of window and door, and setting up of an office inside - indicate that it is intended to be retained in position and there is nothing in the submissions to suggest otherwise.
9. My finding on this matter is that, following the principles in *Skerritts*, what is on the land is a building, as defined in S336 of the 1990 Act. Therefore, the matters alleged in the Notice has occurred and the ground (c) appeal fails.

Ground (a) and the Deemed Application

10. The main issues in connection with the ground (a) appeal are the effect of the building on:

¹ *Gabbitas v SSE & Newham BC* [1985] JPL 630

² *Skerritts of Nottingham Ltd v SSETR (No. 2)* [2002] EWCA Civ 5569

- the character and appearance of the area;
- the living conditions of the occupants of 75 Jacobs Gutter Lane, having particular regard to outlook; and
- highway safety.

Character and appearance

11. 75 Jacobs Gutter Lane is a detached bungalow in a line of dwellings that lies on the north side of that road. The dwelling is set well back from the highway. The site is not subject to any landscape or townscape designations.
12. Its extensive front garden is largely open to the road, with a small portion of its original front boundary retained, from which a large oak tree is growing. An 'L'-shaped area of the front garden, taking up the majority of it, has been surfaced with block paviors and provides the property with a large parking area. A low fence divides the parking area from a grassed and gravelled area in front of the house. It is in this area, close to the boundary with 77 Jacobs Gutter Lane that the building has been erected.
13. Notwithstanding that it is in the front garden, by reasons of its relatively small size and distance from the road, it is not prominent when seen from the public highway directly in front of No 75. Were vehicles to be parked on the parking area in front of the building, as I am sure does happen, the small structure would be even less visible.
14. This is not the only outbuilding that is present in the front gardens of properties along this stretch of Jacobs Gutter Lane. There is a large building, which appears to be a double garage, in the front garden of 'Rowans' a short distance to the east of the site. A similar sized garage lies in the garden of No 77, which lies immediately to the east of the appeal site. Both are far larger than the building that forms the subject of this appeal and, by reasons of their size and siting close to the rear of the highway, they are far more prominent. A further outbuilding lies in the front garden of the dwelling immediately to the west of No 75, 73 Jacobs Gutter Lane. This is a smaller building than those at No 75 and 'Rowans', but is, again by reason of its siting, more prominent in the street scene than the building that forms the subject of this appeal.
15. I did not see the form of timber cladding used on the appeal building elsewhere in the vicinity of the site. Timber boarding has been used elsewhere, for example on the front elevation of the garage at No 77, but is of a different form and it has been dark stained. Notwithstanding the above, the use of timber boarding causes no harm, having a neutral effect on the street scene.
16. In terms of wider street scene views, when one passes along the highway from the front of No 75 to the front of No 73, it is entirely lost to view as a result of the latter property's outbuilding and boundary hedge. Moving to the east, due to the high evergreen hedge and a fence along the boundary with No 77, the building is very little seen. This is limited to the upper part of its roof and a portion of its small gable end.
17. Beyond these two properties, I could not see the building from vantage points in Jacobs Gutter Lane. It is not in a prominent location and, therefore, little seen in the townscape. Even with its use of timber boarding, it is not an incongruous feature, and this is the case irrespective of the

numbers of pedestrians passing along the road going to and from the nearby school.

18. My finding on this main issue is that the building is sympathetic to its setting in terms of height, scale, layout, appearance and materials. It is well designed and respects the character, identity and context of the area. It accords, therefore, with the terms of LP Policy ENV3 and Chapter 12 of the National Planning Policy Framework ('the Framework').

Living conditions

19. The outbuilding lies close to the boundary with No 77 and is similarly further forward of its principal elevation. The boundary with No 77, to the rear of the outbuilding, consists of a solid timber fence with a smaller area of timber trellis above. It is slightly lower than the building and, although I did not enter that property, I could see that a portion of the building would be seen from that property. However, this is limited to the upper part of its gable end and an oblique view of its roof.
20. That a small portion of it can be seen from No 77 does not equate with having an overbearing effect on that property's occupants. It does not have such an effect.
21. The Reasons for Issuing the Notice do not refer to the effects of the use of the building as an office on the living conditions of the occupants of No77. Similarly, this is not mentioned in the 'Impact on Neighbouring Amenity' section of its statement. However, the Council suggests the use of three conditions relating to this issue and a fourth that relates to living conditions generally.
22. I agree that a condition restricting the use of the building to purposes incidental to the use of No 75 is required, as its use by third parties could have an adverse effect on the occupants of both No 77 and No 75. I have not been provided with any reason as to why its use for overnight accommodation would be harmful to the living conditions of No 77 and do not include this portion of the Council's proposed condition. Given that I am attaching a condition relating to incidental use, there is no need for a condition restricting the building's business user. I address the highways implications of the numbers of visitors to the office, below, and much of that reasoning is also relevant here. This is a small building, which would provide a limit to visitor numbers, and its use as an office would be appropriate to this residential area, and would not cause harm through noise or other disturbance. Therefore, I find that there is no need for the fourth of the Council's proposed conditions.
23. For the above reasons, I find that the building does not cause unacceptable effects to the living conditions of the occupants of No 77 by reason of an overbearing effect, in accordance with LP Policy ENV3 and the Framework.

Highway safety

24. This main issue was not mentioned in the Notice; it is, however, referred to in the Council's statement and, therefore, the Appellant had the opportunity to counter what was said. They did not do so, other than by saying that this issue was absent from the Reasons in the Notice. Given that it has been mentioned, it is a matter that I need to address as a main issue; as the Appellant has had an opportunity to comment, there is no prejudice in my doing so.

25. The Council's position is that they are aware that the intended use of the building is as an office - it was set up this way at the time of my site visit. Its fear is that if used for meetings or visitors, there might be insufficient parking and turning facilities on site to cater for this use. This could lead to vehicles reversing into the road to the detriment of highway safety, especially for more vulnerable highways users such as children going to and from the nearby Hounslow school. The Council suggests that, should the appeal be allowed a condition restricting the use of the office to no more than two visitors should be attached on the grounds of highway safety.
26. Jacobs Gutter Lane was quiet when I visited, though I could appreciate that it could be fairly busy at certain times due to the nearby school, various Council premises and other residential areas that it serves. It is fairly straight in the area of the appeal site. Its parking area is separated from the carriageway by a fairly wide footway. As its frontage has been largely opened up, there is good visibility for vehicles entering and exiting the site and for pedestrians passing on the footway. The speed of passing traffic that I saw was not high, and there is a 30-mph speed limit in place.
27. The office is very small, and was largely filled by the single desk, two chairs and the small amount of office equipment I saw at my visit. It could not reasonably accommodate more than two or three people; though it would be cramped if used by the latter number. Thus, there is little prospect of a large number of vehicles visiting the site in conjunction with the office. The extensive parking and turning area would easily provide the needs required for the dwelling and office. However, were it to be the case that vehicles did have to reverse onto the highway, for the reasons given, I do not find that this would result in dangerous conditions for highways users, including schoolchildren. For these reasons, I find that the proposed condition is unnecessary.
28. The Council did not refer to a development plan policy in respect of its highway safety position. I have, therefore, used paragraph 111 of the Framework as the yardstick against which to assess this matter. My finding is that the use of the building as an office would not lead to dangerous highways conditions, and this use would accord with the terms of paragraph 111 of the Framework.

Conclusion

29. For the reasons given above, I conclude that the appeal fails on ground (c), but succeeds on ground (a). I shall grant planning permission for erection of an outbuilding, consisting of a shipping container which has been adapted to include timber cladding, a pitched roof, uPVC windows and French doors as described in the notice.
30. The appeal on ground (f) does not therefore fall to be considered.

Roy Curnow

Inspector