
Appeal Decision

Site visit made on 12 June 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/T1410/C/22/3312990

4 Northbourne Road, Eastbourne, BN22 8QT

- 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 Paul Veness against an enforcement notice issued by Eastbourne Borough Council.
 - The enforcement notice was issued on 8 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the unauthorised erection of the platform to rear of property.
 - The requirements of the notice are:
 - i. Remove the unauthorised platform in its entirety and clear all resultant debris.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a), the deemed planning application (DPA)

Main Issues

2. The main issues are the effect of the development upon:
 - the living conditions for the neighbouring occupiers of Nos 2 and 6 Northbourne Road with particular regard to privacy; and
 - the character and appearance of the host building and area.

Reasons

Living Conditions of Neighbouring Occupiers – Privacy

3. I note that there are currently views of neighbouring rear gardens from existing ground and first floor windows of all properties along Northbourne Road. Notwithstanding this, the raised platform to rear of property is in close proximity to the adjacent ground floor windows of both adjoining properties at Nos 2 and 6 Northbourne Road. Owing to the size and scale of the raised platform, the unauthorised development has increased the degree of

overlooking of these neighbouring windows which is detrimental to the privacy of the occupiers of these neighbouring properties.

4. I observed during my site visit that the appellant has subsequently installed taller fencing along the boundaries with the neighbouring properties to mitigate this harm. The appellant also states that opaque panels could be installed to prevent any loss of privacy. However, the allegation in the enforcement notice forms the basis of the deemed planning application (DPA), and therefore the DPA does not include the fencing works now installed or the proposed opaque panels. Furthermore, the fencing and opaque panels proposed modifies the development substantially from that set out in the DPA, with regard to the character and appearance of the property and its impact on the living conditions of the neighbouring occupiers. As such, I consider that a condition requiring these details would not be reasonable in this case. Indeed, it is open to the appellant to apply for planning permission for these amended schemes if they so wish.
5. Consequently, I conclude that the development results in a harmful effect on the living conditions of the occupiers of neighbouring occupiers at Nos 2 and 6 Northbourne Road with regards to privacy, in conflict with saved Policy HO20 of the Eastbourne Borough Plan, 2007 (LP), and Policy B2 of the Eastbourne Core Strategy, 2013 (CS). Amongst other things, these require that development proposals protect the residential amenity and privacy of existing and future residents.
6. The development also conflicts with paragraph 130 of the National Planning Policy Framework (2021) which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Character and appearance

7. The appeal site relates to a mid-terrace two storey property within a residential area, characterised by similar two storey properties. The raised platform located to the rear of the property is of an acceptable size and scale and does not occupy a disproportionate amount of garden space. Furthermore, it is constructed from materials which match the main property. In these respects, the unauthorised development, does not appear unduly dominant nor harm the openness of the appeal site and surrounding area.
8. I therefore conclude that the unauthorised development preserves the character and appearance of the host building and area. It would therefore be in accordance with Saved Policy UHT1 of the LP and Policy B2 of the CS, which amongst other things requires that all development proposals are appropriate in scale, form, materials, setting and also create an attractive, safe, and clean built environment with a sense of place that is distinctive and reflects local character. The development also complies with paragraph 130(c) of the Framework, which requires development to be sympathetic to local character and history.

Conclusion on Ground (a) and the Deemed Planning Application

9. 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 harm to the living conditions for the neighbouring occupiers with regard to privacy.

10. The development preserves the character and appearance of the host building and area, and I acknowledge that the existing property has been modernised for current and future occupiers. However, these do not outweigh the harm I have identified above. There are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
11. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) and the deemed planning application should fail.

Appeal on ground (f)

12. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
13. The enforcement notice requires the removal of the unauthorised platform. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
14. The appellant states that the installation of opaque panels or the taller fencing currently installed would overcome any harm to privacy. However, I have already found under the ground (a) appeal that these would modify the development substantially from that set out in the DPA and am therefore unable to consider these alternatives. Indeed, it is open to the appellant to submit a planning application to the Council for these revised schemes if they so wish.
15. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
16. On this basis, the ground (f) appeal fails.

Conclusion

17. 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