



Appeal Decisions

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: 04 July 2023

Appeal A Ref: APP/T1410/C/21/3282592

Land rear of 25 Badlesmere Road, Eastbourne BN22 8TL

- 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 Daniel van Kleeff against an enforcement notice issued by Eastbourne Borough Council.
 - The enforcement notice was issued on 11 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the siting of two containers on the Land.
 - The requirements of the notice are:
 - i. Remove both containers from the Land.
 - ii. Clear all resultant debris from the Land.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) 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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Appeal B Ref: APP/T1410/W/21/3282459

Land rear of 25 Badlesmere Road, Eastbourne BN22 8TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Daniel van Kleeff against the decision of Eastbourne Borough Council.
 - The application Ref: PC/210370, dated 21 April 2021, was refused by notice dated 12 July 2021.
 - The development proposed is retention of two storage containers.
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Decisions

Appeal A:

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 B:

2. The appeal is dismissed.

Preliminary Matters

3. As set out above there are two appeals on this site. The appeal on Ground (a) is that planning permission should be granted for the matters stated in the

notice. Since the planning appeal (Appeal B) is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together to avoid duplication, except where otherwise indicated.

4. At the time of the site inspection, the containers had been removed from the appeal site. However, the appellant's representative clarified that the appellant would still like the appeal to proceed. I have therefore determined the ground (a) appeal, and Appeal B on the basis of the allegation stated in the notice, and the drawings submitted with Appeal B

Appeal A on ground (a), the deemed planning application and Appeal B

Main Issues

5. Whilst the enforcement does not refer to concerns regarding flood risk, this is included within the reasons of refusal of the planning application. As this is clearly a material consideration, I have determined the appeal on the basis. Therefore, the main issues are the effect of the development on:
 - The character and appearance of the area;
 - The living conditions for the occupiers of 25 Badlesmere Road, with particular regard to outlook;
 - Highway safety and general accessibility to the block of garages; and
 - Flood risk.

Reasons

Character and appearance

6. The appeal site relates to a court of single storey garages with flat roofs situated in a residential area comprising predominantly two storey brick-built dwellings with timber cladding. The area includes landscaped front and rear gardens, grassy verges with trees planted along the street, thus providing an open and verdant character to the streetscene. The existing garages are relatively low-lying structures made from matching brickwork help maintain the open residential character of the area.
7. In contrast, the two metal containers have a more utilitarian appearance and being taller than the existing low level domestic garages, in addition to their position, at the entrance to the garage block, appears unduly dominant and introduces a visually discordant and incongruous feature in the context of this residential area. I do not consider that cladding would overcome this harm, as it is the combined size, height, prominence, and design which is particularly discordant.
8. I therefore conclude that the development has a harmful effect upon the character and appearance of the area generally, contrary to Saved Policy UHT1 of the of the Eastbourne Borough Plan, 2007 (LP), and Policies B2, D1 and D10a of the Eastbourne Core Strategy, 2013 (CS), which amongst other things requires that all new development should be well designed, that design and layout should take account of context, 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.

Living conditions for the occupiers of 25 Badlesmere Road – outlook

9. The two containers would be located immediately adjacent to the small rear garden and residential property of 25 Badlesmere Road. The containers are painted green in an attempt to blend in with the surrounding landscaping. Notwithstanding this, the containers rising above the existing rear boundary 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.
10. I therefore find the development results in harm to the living conditions for existing occupiers of 25 Badlesmere Road, with particular regard to outlook, contrary to HO20 of the LP. Amongst other things, this states that proposals will be refused unless they can demonstrate that they do not cause unacceptable loss of outlook.

Highway safety and general accessibility to garages

11. During my site inspection I observed that the entrance to the garage block, without the containers in place, provides clear and safe access for pedestrians and vehicles to enter and leave the garage blocks with clear visibility.
12. However, the photographic evidence and drawings submitted indicates that the entrance to this area would be significantly reduced by the two containers in place. The appellant considers that vehicles can continue to enter and leave the garage court safely when the containers are in place, and a photograph has been submitted showing a vehicle entering the garage block. However, the evidence does not clearly demonstrate that sufficient space remains for pedestrian and vehicles to pass in and out safely. Furthermore, the plans and photographs submitted indicate that the doors for the container would open outwards, thereby further reducing the width of the entrance for vehicles and pedestrian to pass one another safely.
13. Therefore, in the absence of any compelling evidence to the contrary, I conclude that the development harms highway safety and general accessibility to the block of garages. In this respect the development conflicts with Policies B2 and D1 of the CS. Amongst other things these state that new development should be sustainable and be well designed, and create an attractive, safe, and clean built environment.
14. The development also conflicts with the National Planning Policy Framework, 2021 (Framework) which requires that safe and suitable access to the site can be achieved for all users.

Flood risk

15. The site is lies within Flood Zone 3, defined by the 'Planning Practice Guidance' as having a high probability of flooding. A site-specific flood risk assessment (FRA) has not been submitted, contrary to the requirements of the Framework. In particular, the shipping containers which were not fixed to the ground can present a danger in the event of a flood if they are dislodged by flood water. However, this matter could be addressed through a suitably worded condition requiring details of fixings to be submitted to and approved in writing by the Council before the containers are installed.

16. Therefore, despite the application not being supported by site specific FRA, contrary to the Framework, on this occasion subject to that condition, the development would not have a harmful effect on flood risk.

Conclusion on Ground (a) and the Deemed Planning Application and Appeal B

17. 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 of No 25 Badlesmere Road, character and appearance and highway safety and general accessibility to the garages. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
18. 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, and Appeal B should be dismissed.

Appeal A: The appeal on Ground (g)

19. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 1 to 2 months as the appellant is storing his own items in the containers and more time is needed to find alternative storage and remove the containers. However, the containers have already been removed and therefore there is no longer any clear reason why the period for compliance should be extended.
20. On this basis, the appeal on ground (g) fails.

Conclusions

21. **Appeal A:** 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.
22. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R Satheesan

INSPECTOR