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RTPI

Chartered Town Planners

TOWN AND COUNTRY PLANNING ACT 1990

SECTION 174(2) APPEAL

ENFORCEMENT GROUNDS OF APPEAL

BY

MR OLIVER WESTWOOD

AGAINST THE DECISION OF

EASTLEIGH BOROUGH COUNCIL

TO

ISSUE A PLANNING ENFORCEMENT NOTICE

AT

58 BRIGHT WIRE CRESCENT, EASTLEIGH, SO50 5SQ

PREPARED BY

James Blake MTRPI

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September 2023

1.0 Introduction

1.1 My name is James Blake MRTPI. I am an Associate Planning Consultant at Ken Parke Planning Consultants Limited and I hold a BA (Honours) degree in Geography and an MSc in Urban and Rural Planning. I have over eight years of professional experience in town planning, having worked across a wide range of projects at varying scales.

1.2 This statement has been prepared on behalf of Mr and Mrs Westwood ('the Appellants') in respect of a planning appeal in relation to the decision of Eastleigh Borough Council ('the Council') to issue an enforcement notice (ref. CD/013318) on 9 August 2023.

1.3 The Enforcement Notice alleges a breach of planning control as follows:

"Without planning permission, the erection of an unauthorised outbuilding [as] shown in red on the attached plan. By virtue of the height, scale and mass, as well as the materials used, the structure of the outbuilding is creating an imposing presence at the foot of the garden space adjacent to the public realm, which is visually intrusive and, as erected, is noticeably larger than outbuildings situated within a number of other gardens within the estate, standing much higher than the boundary fence while others have minimal pitched roofing visible above boundary fence lines."

1.4 The Enforcement Notice is accompanied by a plan which identifies the approximate position of the outbuilding in blue, in the rear garden of 58 Bright Wire Crescent, Eastleigh, SO50 5SQ ('the appeal site').

1.5 The reason for issuing the Enforcement Notice is stated that a breach of planning control has occurred within the last four years and that the breach is in contravention of Policy DM1 of the Eastleigh Borough Local Plan 2016 – 2036 (April 2022) and the Quality Places SPD (November 2011).

1.6 The requirements of the Notice are to:

a) Remove from the land the unauthorised outbuilding as marked in blue on the attached plan.

- b) Please remove any waste items that result from the works to an authorised place of disposal.
- 1.7 The time for compliance is stated as three months after the Notice takes effect. The effective date is stated as being 14 September 2023 unless an appeal is made against it beforehand.
- 1.8 The Appeal proceeds on grounds (a) and (f) in respect of the outbuilding.
- 1.9 A copy of the Enforcement Notice is included at Appendix JB1.
- 1.10 A summary of the site context and surrounds is included at Section 2 of this statement. Section 3 outlines the planning history of the site. A summary of the development plan policies as cited in the Enforcement Notice and other relevant material considerations are set out in Section 4. Section 5 discusses the grounds for appeal. Conclusions are drawn at Section 6.

2.0 The Site and Surrounding Area

- 2.1 58 Bright Wire Crescent is situated within an existing and established residential estate within Eastleigh, west of the train station and east of the M3 motorway.
- 2.2 The dwelling is a two-bedroom end of terrace two storey house. The rear garden is bounded by fencing and a rear gate provides access to a parking area at the rear of the property. The parking area is a public space and features a narrow paved walkway beyond the rear boundary of the property and the parking area itself.
- 2.3 The Appellants, who are the long-term occupiers of the site, erected a replacement outbuilding in the form of a shed within the rear garden of the appeal site in late September 2022. The outbuilding is located against the rear boundary, within the curtilage of the dwellinghouse.
- 2.4 The outbuilding measures 4.37 metres by 3.26 metres (14.25 m²). It is 2.48 metres in height and constructed from 70mm concrete block internals with plasterboard, clad with feather edge timber. The roof is flat and made from 18mm thick Oriented Strand Board (OSB) with roofing felt atop. The outbuilding sits on a pre-existing 150mm thick concrete slab for foundations and has one window and one door facing the rear of 58 Bright Wire Crescent.
- 2.5 The outbuilding is used for general garden and household storage for domestic items such as a dining table and chairs, spare fridge and as a wardrobe space for additional clothes storage. The Appellants also use it as a home office, being equipped with a small desk.
- 2.6 The site and the surrounding area are not subject to any historical, landscape or ecological designations.

3.0 Planning History

- 3.1 A search of Eastleigh Borough Council's online planning records reveals there are no planning applications registered to the site specifically.
- 3.2 Correspondence from the Council dated 10 May 2022 identifies that *"the outbuilding breaches Condition 5 of the decision notice under Planning Application no. 04771/124."*
- 3.3 Following several requests, the Council supplied the decision notice on 4 September 2023 for application ref. 04771/124 – first phase of residential development for 214 dwellings and 6,937 square metres of offices (B1 use) together with ancillary parking and roads within master plan, with subsequent amendments dated 11 March 2002, 18 May 2002 and 7 June 2002 – permitted 26 June 2002.
- 3.4 Condition 5 states the following:

"Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (Classes A-H inclusive, of Part 1, Schedule 2), the dwellings hereby permitted must not be extended or altered and there shall be no structures erected within their respective curtilage without the prior written permission of the Local Planning Authority."

Reason: In order to prevent an unplanned overdevelopment of the site, and in the interests of residential amenity."

- 3.5 As such, Condition 5 has the effect of removing all of the Schedule 2, Part 1 permitted development rights across the estate in relation to householder enlargements, additions or improvements, including the erection of *buildings etc incidental to the enjoyment of a dwellinghouse* under Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (as amended).
- 3.6 Notwithstanding this, it is evident from recent satellite imagery and photographs taken by the Appellants (See Appendix JB2) that there were outbuildings comprised of sheds provided with the rear garden spaces of the dwellings when first constructed. A number of these outbuildings in

neighbouring rear gardens forming part of the terrace, as well as throughout the wider estate have clearly been replaced over the years with larger outbuildings. There appears to be no record of these replacement outbuildings having applied for planning permission or being subject to enforcement action.

4.0 The Development Plan and Material Considerations

- 4.1 The Council's Enforcement Notice refers to Policy DM1 of the Eastleigh Borough Local Plan 2016 – 2036 (April 2022) and the Quality Places SPD (November 2011).

Eastleigh Borough Local Plan (April 2022)

- 4.2 Policy DM1 General Criteria for New Development identifies that:

"1. All new development should (as relevant):

- a. not have an unacceptable impact on, and where possible should enhance:*
 - i. residential amenities of both new and existing residents; the character and appearance of urban areas, the countryside and the coast;*
 - ii. biodiversity (avoiding significant adverse impacts); and*
 - iii. the significance of heritage assets;*
- b. make efficient use of the site, maximise opportunities to increase density and have regard to potential development opportunities on adjoining land;*
- c. take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbourhood, and be compatible with adjoining uses and be well integrated with these in terms of mass, scale, materials, layout, density, design and siting, both in itself and in relation to adjoining buildings, spaces and views. Where adjoining development is poor in urban design terms, new development should contribute to improving the character of the area;*
- d. not involve the loss or damage to trees, woodlands, hedgerows, ponds, priority habitats or other landscape features of value to the character of the area, for appearance or biodiversity unless they*

can be replaced with features of equivalent or enhanced value, (recognising that some species and habitats may be irreplaceable);

- e. including a landscape scheme covering the design and layout of external space;*
- f. protect and enhance public rights of way and National Trails and provide fully connected green infrastructure that interlaces the development and connects into the wider network;*
- g. provides satisfactory management arrangements for all landscape, green infrastructure and biodiversity enhancement;*
- h. incorporate provision for people with disabilities and create accessible communities that cater for all;*
- i. incorporate design measures to inhibit criminal and anti-social behaviour;*
- j. incorporate provision for on-site waste management; and*
- k. include provision for public art associated with new large scale development in accordance with the Council's adopted Public Art Strategy."*

4.3 The Quality Design SPD (November 2011) sets out guidance for those involved in creating new buildings and spaces in the Borough of Eastleigh and states that *"good urban design is an essential part of our plans for delivering high quality sustainable development. New development should respect, enhance and create places which are attractive and of real quality... new development should be designed to meet the practical, everyday needs of residents... new homes should... have enough space to meet the requirements of modern living."*

4.4 The Council's Enforcement Notice fails to specify which part of the SPD is of relevance to the matter. Ancillary buildings are referred to in the Architectural Detail section as buildings that may include bin and bike stores, general storage and garages. The guidance does not refer to sheds in particular, other

than in relation to *“the roofs of low structures such as sheds, garages, and bin and bicycle stores can have a more immediate impact at street level.”*

Relevant Material Considerations

- 4.5 The Town and Country (General Permitted Development) (England) Order 2015 (as amended) allows for the erection of *buildings etc incidental to the enjoyment of a dwellinghouse*, under Schedule 2, Part 1, Class E:

Permitted development

E. The provision within the curtilage of the dwellinghouse of –

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure;

Development not permitted

E.1 Development is not permitted by Class E if –

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of curtilage (excluding the ground area of the original dwellinghouse);

(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

(d) the housing would have more than a single storey;

(e) the height of the building, enclosure or container would exceed –

(i) 4 metres in the case of a building with a dual-pitched roof,

- (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
- (iii) 3 metres in any other case;
- (f) the height of the eaves of the building would exceed 2.5 metres;
- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;
- (h) it would include the construction or provision of a verandah, balcony or raised platform;
- (i) it relates to a dwelling or a microwave antenna;
- (j) the capacity of the container would exceed 3,500 litres; or
- (k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

5.0 Grounds of Appeal

- 5.1 This appeal seeks to proceed on grounds (a) and (f). In respect of ground (a), the Appellant has paid the requisite fee of £412 to Eastleigh Borough Council, as set out in the Enforcement Notice.

Ground (a) Appeal

- 5.2 Acknowledging that Condition 5 of application ref. 04771/124 removes permitted development rights to carry out small scale domestic alterations and additions that otherwise would not require planning permission, it is a long-established planning principle that conditions withdrawing permitted development rights for residential properties should only be used in exceptional circumstances and only on a case-by-case basis to serve a particular purpose.
- 5.3 The imposition of such a condition is considered to be both unreasonable and unnecessary, particularly when the Council's Enforcement Notice recognises there are other *"outbuildings situated within a number of other gardens within the estate"*. Any condition, in order to be lawfully imposed, must meet the tests as set out in paragraph 56 of the National Planning Policy Framework (NPPF) (September 2023), namely that they *"should be kept to a minimum and only impose where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."*
- 5.4 Further, paragraph 54 identifies that *"planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so."* The reason as set out in the decision notice (*"to prevent an unplanned overdevelopment of the site, and in the interests of residential amenity"*) is a weak justification at best.
- 5.5 Paragraph 59 identifies that *"enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."* In this instance, it is considered that the Council's decision to issue an enforcement notice, is disproportionate and extreme, given the small-scale nature of the development and the acknowledged existence of other outbuildings on the estate.

- 5.6 The current Planning Practice Guidance (PPG) advises¹ that conditions imposed restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Moreover, the PPG states that area wide or blanket removals preventing the carrying out of small domestic works are unlikely to pass the test of reasonableness and necessity.
- 5.7 In this case, the replacement outbuilding erected by the Appellants within the rear garden of the appeal site is of a size and height that falls within the parameters of outbuildings allowed under the provisions of Class E of the GPDO (2015) (as amended).
- 5.8 In granting permitted development rights through the GPDO, the government has considered what level of development can reasonably take place without harm (i.e., without necessitating further scrutiny from the planning system). The various classes (and particularly those within Part 1) have been carefully drafted with specific limitations to ensure development falls within what is considered to be acceptable levels of development that do not result in harm. These rights are available to the vast majority of homeowners and as noted, they should only be removed with very good justification so that homeowners are not denied these rights.
- 5.9 Furthermore, the replacement outbuilding is used for purposes ancillary to the enjoyment of the main dwelling as a storage shed for various household items and garden maintenance paraphernalia and as a home office. Both the materials used and the structure of the outbuilding are in keeping with those found elsewhere within the estate.
- 5.10 The outbuilding as constructed is a replacement outbuilding following the removal of two previous outbuildings which had been on site for a period in excess of ten years, without enforcement action being taken beforehand. The first outbuilding was built in 2009 and measured 3.65 metres by 2.7 metres with a height of 2.5 metres. The second outbuilding was constructed on the same footprint in 2018, but had a roof height of 3 metres. These outbuildings can clearly be seen on the aerial images set out in Appendix JB2.

¹ Paragraph: 017 Reference ID: 21a-017-20190723. Revision date: 23 07 2019.

- 5.11 There is no good reason to remove permitted development rights for works under Class E. A blanket approach to the removal of these rights across the development fails the tests of necessity and reasonableness.
- 5.12 It is understood the Council take the view that outbuildings erected using permitted development rights could incrementally cause harm to the character and visual quality of the area. This argument might be acceptable in respect of enlargement in the form of extensions. However, the Council have removed permitted development rights for Classes C-H as well, which are for small scale alterations only, in the form of rooflights, porches, hardstanding, chimneys and antennas.
- 5.13 It is therefore difficult to ascertain how these various minor alterations and operations will cause visual harm. Likewise, the provisions of Class E provide specific height and size restrictions to limit impacts. For example, the 50 percent site coverage stipulation ensures that even on small sites, the size of any outbuilding is proportionate to the space available so as not to result in cumulative harm. The Council's approach is therefore contrary to long established planning principles and current government guidance.
- 5.14 Furthermore, the appeal site is not within a sensitive location, nor is it sensitive to change with, or without, planning permission.
- 5.15 Planning policies or conditions should not be used as a 'blunt' tool to take away permitted development rights for additions that do not require permission and which are not governed by local policies.
- 5.16 The Appellants are cognisant that the removal of permitted development rights does not prevent an owner from making a planning application. However, the size, scale and massing of the outbuilding would be within permitted development rights, had these not been removed. The Appellants consider the blanket removal of permitted development rights in this particular instance to be unreasonable, unnecessary and unjustified.
- 5.17 In terms of the impact of the outbuilding on the character of the area and visual amenity, this is extremely limited. The outbuilding simply blends in with existing street scene, as do other existing outbuildings constructed in the rear gardens

of properties in the area. Thus, it is of no consequence to the overall visual impact. The outbuilding is of modest height at 2.48 metres and does not result in harm, nor is it visually intrusive. It is not larger than other outbuildings within the estate and is lower than the previous outbuilding it replaced, which measured three metres in height.

- 5.18 It is clear, therefore, that the outbuilding does not have any impact either on its own or cumulatively and does not detract from or cause harm to the visual amenity and character of the area.
- 5.19 The provisions of Policy DM1 relate to new development in general for works which require planning permission. The imposition of Condition 5 is considered unnecessary because the small-scale nature of the outbuilding does not undermine the Development Plan's aims, noting the policy position has been updated since the original grant of planning permission for the estate.
- 5.20 As such it is considered that planning permission ought to be granted for the outbuilding.

Ground (f) Appeal

- 5.21 The Enforcement Notice requires the removal of the outbuilding and the subsequent disposal of any waste items arising from these works. It is considered that these steps are excessive because they go beyond the previous situation, whereby the Appellant already had an outbuilding on the appeal site. The Enforcement Notice requests the removal of the current outbuilding and for the site to then remain without an outbuilding.
- 5.22 The appeal site has had outbuildings on it in the same location for a number of years previously, where the Council did not take any action against the Appellant. It is assumed, then, that the location, scale, height, massing and materials used were not considered harmful to the character of the area, nor did they cause any of the harms now alleged in the Enforcement Notice.
- 5.23 It would seem reasonable to conclude that if the Appellant is to remove the current outbuilding, it should only be to the state prior to the erection of the subject outbuilding.

6.0 Conclusions

- 6.1 The appeal site has had outbuildings on it for a number of years, as has been evidenced, without an Enforcement Notice being issued by the Council previously.
- 6.2 The Appellants have constructed a replacement outbuilding which, had permitted development rights not been removed by the original planning permission for the estate, would be acceptable under the provisions of the GPDO.
- 6.3 As has been demonstrated, it is unreasonable to remove 'householder' permitted development rights for Class E development where there is no proper justification for doing so.
- 6.4 The Appellants consider that the height, scale, positioning and materials used in the construction of the outbuilding does not harm the character of the area or result in a visually intrusive form of development, nor is it noticeably larger than other outbuildings on the estate, as alleged by the Council.
- 6.5 In the event that the Inspector considers there is no case for enforcement, it is respectfully requested that the Enforcement Notice be quashed. However, if the Inspector concludes that a breach of planning control has occurred, it is respectfully requested that planning permission be granted for the outbuilding for the above reasons.