

EASTLEIGH BOROUGH COUNCIL

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING & COMPENSATION ACT 1991) – SECTION 174

TOWN AND COUNTRY PLANNING (ENFORCEMENT) (WRITTEN REPRESENTATIONS PROCEDURE) (ENGLAND) REGULATIONS 2002 (STATUTORY INSTRUMENT 2002/2683)

STATEMENT OF CASE

Enforcement Notice appeal against Enforcement Notice issued by Eastleigh Borough Council

Appeal by Mr Oliver Westwood – 58 Bright Wire Crescent, Eastleigh, Hampshire, SO50 5SQ

Site – 58 Bright Wire Crescent, Eastleigh, Hampshire, SO50 5SQ

Planning Inspectorate reference: *APP/W1715/C/23/3329379*

Local Authority reference: *ENF/2022/235*

Eastleigh Borough Council
Eastleigh House
Upper Market Street
Eastleigh
Hampshire
SO50 9YN

15 December 2023

INTRODUCTION

1. This statement is in respect of an appeal made by Mr Oliver Westwood, tenant/occupier of 58 Bright Wire Crescent, Eastleigh, Hampshire, SO50 5SQ (“the Appellant”) against the decision of Eastleigh Borough Council (“the Council”) to issue an Enforcement Notice. On 11th August 2023 an Enforcement Notice was issued and served on the Appellant for a breach of planning control; specifically, without planning permission, the erection of an unauthorised outbuilding.

REASONS FOR ISSUING THE ENFORCEMENT NOTICE

2. The reasons for issuing the Enforcement Notice are as follows:
 - (i) The breach of planning control has occurred within the last four years.
 - (ii) The outbuilding does not benefit from planning permission under the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 2, Class E (*buildings etc incidental to the enjoyment of a dwellinghouse*) as the dwellinghouse falls under Planning Reference Z/04771/124 within which Condition 5 states that *“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”*.
 - (iii) The outbuilding is considered to be imposing and visually intrusive by virtue of its height, scale, mass, and the materials used, and is considered to have a detrimental impact on the street scene and character of the area and is therefore contrary to Policy DM1 of the Eastleigh Borough Local Plan 2016 – 2036. The fence is considered to have a detrimental impact on the street scene and character of the area and is therefore contrary to the Eastleigh Borough Council Local Plan 2016 – 2036.
 - (iv) There are concerns the erection of the structure without the proper required planning consent risks setting a precedent for other residents to erect similar structures, and as such create the kind of overdevelopment that the removal of Permitted Development rights from the development sought to avoid.

LOCATION AND DESCRIPTION OF APPEAL SITE AND SURROUNDING AREA

3. The area, in general, is characterised by terraced properties, in close proximity to the road with small open frontages and rear gardens enclosed within wooden fences which provides a sense of uniformity for an attractive appearance within the street scene. There are examples of properties within the estate which have smaller shed structures erected within their rear gardens, but these are much smaller with only the very tips of pitched roofing visible above the boundary fence lines, while this outbuilding as erected is noticeably larger, creating an imposing presence at the foot of the garden space adjacent to the public realm which is visually intrusive due to a combination of its height, scale and mass, as well as the materials used, standing well above the boundary fence line.

RELEVANT PLANNING POLICY

4. The relevant planning policy is Saved Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) which states:

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 of 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. include 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. provide 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.

GROUND OF APPEAL

5. The appellant has appealed against the Enforcement Notice on the following ground of appeal:

Ground (a) – That planning permission should be granted for what is alleged in the notice..

Ground (f) – The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

Appellants comments;

(a) 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.

(b) 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."

(c) 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.

(d) 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.

(e) The current Planning Practice Guidance (PPG) advises 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.

(f) 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).

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) Furthermore, the appeal site is not within a sensitive location, nor is it sensitive to change with, or without, planning permission.

(m) 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.

(n) 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.

(o) 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.

(p) 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 7227 – 58 Bright Wire Crescent 13 Mr and Mrs Westwood 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.

(q) 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.

(r) 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.

(s) As such it is considered that planning permission ought to be granted for the outbuilding.

(t) 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.

(u) 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.

(v) 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.

Relevant planning policies and guidance

6. Under the section Ancillary Buildings of the Quality Places SPD, it is stated that, for existing properties, outbuildings should be *"sympathetically related to the main dwelling, whether they are adjoined or free-standing. Pitched or lean-to roofs are normally preferable to flat roofs as they are more likely to complement the existing house and locality"*. Additionally, Key Design Principle 15: (Design of Buildings and Materials) notes that *"The scale, form and design of elevations and external materials should respond positively to the defining and distinctive characteristics of the area"*.

Relevant history

7. We received a report of a planning breach on 20th April 2022, relating to alleged unauthorised business activities being carried out from the outbuilding of the residential property. An initial desktop investigation uncovered no evidence of this, with the Appellant confirming that the structure was being used primarily for the storage of expensive tools. During a follow up site inspection and enforcement investigation conducted on 14th October 2021 (see appendix 1) it was observed that present on the front of the shed are a glazed door and a large window, each without any obscured glazing, and each easily visible above the

fence line and from outside the property boundary, which would seem contrary to such security requirements. A letter was issued to the appellant on 10th May 2022 inviting the submission of a Retrospective Planning Application (see appendix 2). No Application has ever been received.

8. Further desktop investigations took place during July and August 2022 to establish the ownership of the property as per Land Registry information, and the adult occupancy of the property via Eastleigh Borough Council's Council Tax and Electoral Register information.
9. Further site visits were conducted on 8th September 2022, 19th January 2023 and 28th April 2023 to confirm if there had been any changes made to the development and to gather up to date evidence (see appendix 3).
10. On 13th July 2023 an enforcement notice was served on Mr and Mrs Westwood requesting the following (see appendix 4):
 - 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.
11. Contact was received by our Legal team from the Appellant and his Agent requesting clarification on the harm being caused by the outbuilding as they felt the initial Enforcement Notice did not clearly evidence this. (see appendix 5).
12. Following internal discussion between the Planning Enforcement, Planning and Legal teams, it was determined that the initial Enforcement Notice would be withdrawn and a new one served which more clearly outlined the harm. The previous Enforcement Notice was withdrawn on August 11th 2023 (see appendix 6) and the new Enforcement Notice was also served on August 11th 2023 (see appendix 7), requesting the following:
 - 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.
13. An appeal was received on 13th November 2023.

Whether planning permission should be granted

14. Planning permission has not been sought for this boundary treatment.

SUMMARY AND CONCLUSION

15. The Council considers that there has been a clear breach of planning control as permitted development rights for the whole estate had been removed, and despite inviting it, planning permission has not been sought for the retention of the outbuilding. Additionally, no evidence was provided to the LPA prior to appeal during the course of the Enforcement investigation to show that the previous outbuilding structures had been in place for more than 4 years, and notwithstanding this, it is clear from the evidence provided by the Appellant that given the difference in size and materials used, this is an entirely new development.
16. The appeal has not demonstrated that the development accords with saved policies of the Eastleigh Borough Local Plan (2016-2036) or the Quality Places SPD.
17. The outbuilding is not considered to benefit from consent under Schedule 2, Part 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as these rights were removed under Condition 5 of Z/04771/124.
18. There are concerns the erection of the structure may set a precedent for future development (existing or proposed). A Retrospective Planning Application has been invited and the resident has refused to do so. The shed as erected is noticeably larger than sheds situated within a number of the other gardens within the estate, standing much higher than the boundary fence while others just have pitched roofing visible above boundary fence lines. The structure of the shed is creating an imposing presence at the foot of the garden space adjacent to the public realm which is visually intrusive due to a combination of its height, scale and mass, as well as the materials used. The Inspector is respectfully requested to dismiss the appeal and uphold the Enforcement Notice.

APPENDICES

Appendix 1: ENF/2022/235 report on 20th April 2022 reporting unauthorised business activities within a newly in-construction outbuilding, initial desktop investigation conducted and indicated no business activities taking place but site inspection conducted on 22nd April 2022 observed outbuilding being constructed in contravention of Condition 5 of Z/04771/124.

Appendix 2: ENF/2022/235 letter sent to appellant on 10th May 2022 inviting the submission of a retrospective application.

Appendix 3: ENF/2022/235 Further site visits were conducted on 8th September 2022, 19th January 2023 and 28th April 2023 to confirm if there had been any changes made to the development and to gather up to date evidence.

Appendix 4: ENF/2022/235 Planning Enforcement Notice is served on 13th July 2023.

Appendix 5: ENF/2022/235 Communication received from Appellant and Agent requesting clarification on the perceived harm.

Appendix 6: ENF/2022/235 Initial Planning Enforcement Notice is withdrawn on August 11th 2023.

Appendix 7: Revised Planning Enforcement Notice is served on 11th August 2023.