



Appeal Decisions

Site visit made on 29 January 2019

by **Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th March 2019

Appeal A Ref: APP/E1210/C/18/3208175

Land off Jesmond Avenue, Highcliffe, Christchurch, Dorset BH23 5AY

- 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 C Bulstrode of Brentland Limited against an enforcement notice issued by Christchurch Borough Council.
- The enforcement notice was issued on 2 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a 2.44, in places rising to 2.60 (approx) metre high hoarding, including all respective posts and cross bars, fixtures, fittings and concrete bases in the ground.
- The requirements of the notice are (a) remove the hoardings, including all respective posts and cross bars, fixtures and fittings, including excavating and the removal for (*sic*) the concrete bases in the ground; (b) ensure that the resulting materials from the compliance with (a) above are removed from the land affected.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B Ref: APP/E1210/W/18/3208180

Land off Jesmond Avenue, Highcliffe, Christchurch, Dorset BH23 5AY

- 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 Brentland Limited against the decision of Christchurch Borough Council.
- The application Ref 8/18/1070/FUL, dated 26 April 2018, was refused by notice dated 22 June 2018.
- The development proposed is described as "*retrospective application for the erection and retention of hoardings*".

Summary of Decision: The appeal is dismissed.

Appeal A, ground (a) and Appeal B

Main Issues

1. The main issues in these appeals are:
 - The effect of the hoarding on the character and appearance of the area.
 - The effect on the risk of flooding.

Reasons

Character and appearance

2. The appeal site consists of a substantial tract of land, mostly covered with maturing trees. The site has a long frontage onto Jesmond Avenue and there are public paths adjacent to both sides. The site forms a significant part of a more extensive, roughly linear area of deciduous woodland.
3. Development along Jesmond Avenue and the adjacent streets largely consists of detached bungalows of similar appearance occupying generous plots, with open and well-tended frontages. The sylvan appearance of the site with its soft leafy frontage to Jesmond Avenue, reinforces the cohesive, pleasantly spacious suburban character of the immediate surroundings. Furthermore, the well-wooded nature of the site creates a significant sense of separation between the suburban streets and the more built-up characteristics of development along Lyndhurst Road. Consequently, the site makes a significant, positive contribution to the character and appearance of the locality.
4. The hoarding is approximately 2.5 metres high and is constructed in solid timber panels. The access gates within the hoarding are of a similar height. The hoarding panels are supported by timber posts set into the ground. Apart from a small gap, the hoarding is continuous for a considerable distance along Jesmond Avenue running adjacent to the carriageway and it also encloses one side of the site.
5. Due to the above factors, the hoarding is viewed as an obvious, utilitarian structure which pays little regard in terms of its design and appearance to the visual qualities of the surrounding area. Furthermore, whilst the tree canopies are still visible the presence of the hoarding along the extensive frontage and side boundary has given the site much harder edges and it has created a significantly more enclosed and built-up feel in the surroundings. Painting the hoarding green and setting it back slightly from the carriageway has not significantly reduced the visual impact. Consequently, the hoarding appears entirely at odds with the spacious suburban character of the locality and it is seen as an obtrusive and alien feature in the street scene.
6. Therefore, I find that the hoarding has caused unacceptable harm to the character and appearance of the area. It follows that the hoarding fails to accord with Policy HE2 of the Christchurch and East Dorset Local Plan Core Strategy (CS), as it is not a high quality and compatible with its surroundings in terms of site coverage, height, materials and visual impact. The hoarding also fails to accord with CS Policy HE3, as it does not protect the area's landscape character taking settlement character, natural features and visual amenity into account.

Flood risk

7. The approach to managing flood risk set out at Section 14 of the revised National Planning Policy Framework (the Framework) is to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. I understand that the hoarding, which is in proximity to a culverted river, is within Flood Zones 2 and 3 and so is at risk of flooding. A site-specific flood risk assessment (FRA) is therefore

required. The Framework makes it clear that applications for all forms of development in Flood Zones 2 and 3 should be supported by an FRA. Both the Framework and the Planning Policy Guidance are also clear that it is up to the developer to carry out an FRA.

8. The absence of an FRA means that it is not possible to determine whether the sequential test and, if required, the exception test in Section 14 have been satisfied and whether flood risk has been increased elsewhere. Therefore, the Framework requirements have not been met. In such circumstances, a precautionary approach is appropriate. Even if I were to accept that the removal of the lower section of the hoarding would allow some passage and flow of water through, as it inevitably would, without an FRA I cannot be confident of the height above ground level this would need to achieve for the free flow of water without increasing the risk of flooding elsewhere. As a result, imposing a planning condition requiring such alterations would not make the hoarding acceptable in terms of flood risk. In any event, a satisfactory conclusion in respect of flood risk would not outweigh the visual harm identified above. Whilst parts of the hoarding could be removed to facilitate access to the culvert if required, it has not been explained how that would have any beneficial effect in terms of managing flood risk.
9. Therefore, based on the available evidence I am not persuaded that the hoarding has not caused an increase in the risk of flooding. Consequently, the hoarding fails to accord with CS Policy ME6, as it has not been demonstrated there has been no increase in the risk of flooding.

Other matters

10. I understand that the hoarding is required by health and safety legislation, to prevent members of the public accessing the site during ongoing tree works and shrub clearance. Further, I understand that the hoarding is a requirement of the appellant's public liability insurance. However, little firm evidence has been supplied in this respect or to indicate the nature, scale and duration of any works being undertaken on the site. For example, no details have been supplied of any consents received from the Council in respect of works to the trees, which I am given to understand are subject to a Tree Preservation Order (TPO)¹. When I visited the site, there was little obvious evidence of any ongoing works. Moreover, as one side is fenced off from an adjacent footpath by low post and wire fencing, it is still possible for the site to be accessed by anyone wishing to do so. Consequently, I have given the appellant's stated reasons for erecting the hoarding limited weight.
11. I understand that the hoarding was neither designed nor intended to be a permanent feature of the site. Whilst a one-year temporary permission might allow for completion of any tree and management works at the site, in the absence of details of those works I am not convinced that a hoarding would be necessary for that amount of time and in any event, as set out in paragraph 10 above, it appears to be doing little to prevent access whatever an appropriate timescale may be.
12. It was also argued that there is a "fall-back" position in respect of erecting a 1 metre high means of enclosure adjacent to Jesmond Avenue, rising to 2 metres high adjacent to the footpath. In respect of the ground (f) appeal, it was

¹ Council TPO Ref: 2017 No 5-Jesmond Avenue No. 1

argued that reducing the hoarding to the permitted development heights above would remedy the breach. As s177 (1) (a) of the Act provides for granting of planning permission in relation to the whole or part of the hoarding, I intend to deal with this matter comprehensively as part of the planning merits arguments.

13. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 2, Class A permits erection of a gate, fence, wall or other means of enclosure provided it is no higher than 1 metre above ground level adjacent to a highway used by vehicular traffic (paragraph A.1 (a) (ii)) and no higher than 2 metres elsewhere (Paragraph A.1(b)).
14. Erecting a 1 metre high solid hoarding along the frontage with a 2 metres high hoarding at the side is unlikely to perform a similar function to the existing structure, as it would not prevent persons from accessing the site-the appellant's stated reason for erecting the hoarding. As a result, a hoarding falling within the GPDO height limits would serve little meaningful, practical purpose. There is nothing to suggest that low post and wire fencing, like that erected on the other side boundary, would not be erected as a means of enclosure instead. Such fencing is likely to perform a similar function to a hoarding erected within the GPDO height limits. Therefore, whilst I accept that if the appeal fails and the notice is upheld the hoarding is likely to be replaced with some form of boundary enclosure, there is no realistic prospect of a new hoarding within the GPDO height limits being erected. Consequently, I afford the fall-back position very limited weight.
15. The alternative of reducing the hoarding to within the GPDO height limits will still cause the visual and flood risk harms identified above, as the suggested fall-back position is unlikely to materialise. Moreover, there is no firm evidence to suggest that reducing the hoarding to within those height limits would be a practical proposition, having regard to the hoarding's materials of construction, or that it would be a straightforward and/or cost-effective operation when compared with erecting an entirely new boundary treatment. I am mindful that enforcement action is intended to be remedial, not punitive and that requiring complete removal of the hoarding simply for it to be partly re-erected within the GPDO height limits would not serve any useful purpose. Nevertheless, for the reasons set out above I find that reducing the hoarding to within the GPDO height limits does not represent an obvious alternative to the requirements set out in the notice.

Conclusion on Appeal A, ground (a) and Appeal B

16. For the reasons given above I conclude that these appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal A

Ground (f) appeal

17. The ground of appeal is that the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
18. The notice alleges that unauthorised operational development consisting of the erection of a hoarding has taken place. The notice requires complete removal

of the hoarding and the resulting demolition materials. The notice does not require works to be undertaken to alter or modify the hoarding in some way. Therefore, although the notice does not say so explicitly, its purpose must be to remedy the alleged breach of planning control by restoring the site to its condition before the breach took place, as opposed to remedying any injury to amenity.

19. Removal of sections of the hoarding below the Environment Agency's recorded flood level would not remedy the breach, as the hoarding would still largely remain in situ. The fall-back position of permitted development rights available under the GPDO and the alternative of lowering the hoarding to within those limits were dealt with at paragraphs 12-15 above.
20. Therefore, I have not been persuaded that the breach could be remedied other than by the steps set out in the notice. Varying the notice such that those steps stopped short of removing the hoarding and the resulting demolition materials would not remedy the breach. It follows that the steps in the notice fulfil the purpose of restoring the site to its condition before the breach took place and do not exceed what is necessary to remedy that breach.
21. Consequently, the appeal on ground (f) fails.

Ground (g) appeal

22. The ground of appeal is that the period for complying with the notice requirements is unreasonably short.
23. Dismantling the hoarding would be a relatively straightforward matter for any experienced fencing contractor. It is likely that a contractor could be instructed and they could complete the dismantling of the hoarding and removal of the materials, within the two months specified in the notice. Therefore, the specified period strikes an appropriate balance between allowing the appellant sufficient time to arrange and have the required works carried out and remedying the planning harm caused by the hoarding.
24. The appellant suggested that 24 months would allow for completion of the works associated with managing trees and scrub on the site and the removal of the hoarding. However, no details of those works have been provided to assess whether that represents a realistic timescale in terms of their duration. In any event, such a considerable length of time for compliance would perpetuate the planning harm caused by the hoarding for an unduly lengthy period and in doing so would effectively frustrate the purpose of the notice.
25. Consequently, the ground (g) appeal also fails.

Formal Decisions

26. Appeal A-the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
27. Appeal B-the appeal is dismissed.

Stephen Hawkins

INSPECTOR