Report to: **Planning Committee**

Date: **March 2020**

Title: **Appeals Record**

Report of: **The Head of Planning**

Ward(s): **All**

Purpose of report: **To note the appeal decisions made Jan – Mar 2020**

1.1 Below is a summary of all planning appeal decisions received in the current Quarter. There is further evidence from these appeals that schemes that are promoting new residential units are being supported by the appeals inspector.

Key to Appeals Reporting

Method of decision	All are delegated decisions unless otherwise specified	**Allowed**	A
Appeal method	All are through written representations unless otherwise specified	**Dismissed**	D

Planning Appeals

Planning Application No	Authority	Site	Description of Development	Decision
190437	EBC	8 Chiswick Place, Eastbourne	Demolition of existing single storey garage and construction of a two storey house	A 03 January 2020

Inspector's Reasoning

- The appeal site is located to the rear of 8 Chiswick Place (No. 8), between that property and 27 Wish Road (No. 27), and fronts Blackwater Road. The site currently comprises a single storey single garage and an area of hardstanding with access off Blackwater Road. The site is located within the Eastbourne Town Centre and Seafront Conservation Area (the Conservation Area), at a point where the predominantly Victorian villas of the seafront, including Chiswick Place, give way to the more varied mix of properties of a range of ages on Blackwater Road, which are outside the Conservation Area.
- In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Moreover, paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
- The appellant refers to the draft Conservation Area Appraisal (the dCAA) for the Conservation Area. This explains that the designated Area was built as a planned new town in the mid-to-late 19th century around a core of 18th century buildings. The special architectural and historic interest of the Conservation Area lies principally in the buildings and the planned layout. The west side of Chiswick Place comprises 19th century 4-storey, rendered villas, the rear elevations of which are clearly visible from Blackwater Road.
- From the evidence before me and my observations during my site visit, the appeal site once formed part of the rear garden of No. 8 but is now separated from it by a wooden fence. The form and external finish of the garage on the appeal site are at odds with those of No. 8. Notwithstanding the Council's contention that the garage appears ancillary to No. 8, it appears to me to have no clear relationship to No. 8 other than being adjacent to the end of No. 8's rear garden. The garage has a closer physical and visual relationship with No. 27 being immediately to the east of that property with the gap between filled by a single-storey extension to No. 27. The garage and the associated hardstanding do not make a positive contribution to the Conservation Area.
- The proposed development has evolved as the result of the appellant seeking to address the reasons for refusal of two previous applications to demolish the garage, move the rear garden boundary within site and erect a 2-storey 2-bedroom detached dwelling on this site. In particular, the appeal site in the proposal before me is restricted to the garage and area of

hardstanding whereas, from the evidence before me, the previous proposals incorporated part of the garden to No. 8. The proposed dwelling would not project forward of the side elevation of No. 8 and the fenestration has been designed to limit the potential for overlooking.

- The proposed dwelling would be of a contemporary design deliberately not copying the architectural style of either No. 8 or No. 27 which I consider to be an honest approach. Given the variety of architectural styles along Blackwater Road, I do not consider that it would be a discordant feature in the street scene. Although the design has given rise to some objections by third parties, I consider the design to be acceptable in this context, a view I note is shared by the Council.
- The proposed dwelling would be set approximately 0.7 m below the existing ground level and would be lower than the ridgeline of No. 27. Whilst clearly visible, it would not therefore be unduly prominent or dominant in the street scene, being seen in the context of taller buildings to either side and not projecting forward of the side elevation of No. 8. The proposed development would not interrupt or detract from the view along Blackwater Road to the South Downs, which I note the dCAA identifies as important, given its modest size and positioning relative to existing development on Blackwater Road.
- Although relatively modest in size, the proposed dwelling would have a significantly greater bulk than the existing garage and would thus have a different relationship with No. 8. However, I have noted above that the existing garage does not relate closely in form or appearance to No. 8 and the appeal site appears as a distinct site in its own right with a road frontage rather than as part of No. 8's rear garden. I am not persuaded therefore that it is necessary for any building on the site to appear as being ancillary to No. 8 for it to be acceptable.
- The site forms part of the gap between the rear elevations of No. 8 and No. 27 and the proposed dwelling, having a greater bulk than the existing garage, would reduce the extent of this gap. From certain angles it would partially block the view of the rear elevations of Chiswick Place. Whilst the space to the rear of Chiswick Place and the view of the rear of these properties make a positive contribution to both the character and appearance of the Conservation Area, from the evidence before me, neither are identified as making a particular contribution to the character or appearance of the Conservation Area in the dCAA. Furthermore, a sufficient gap would remain between No 8 and the proposed dwelling to allow an appreciation of both the open space to the rear of Chiswick Place and of the rear elevations of those properties from Blackwater Road.
- The plot size of the proposed development would be substantially smaller than those of other properties on Blackwater Road, which are predominantly larger buildings on larger plots which provide space around the buildings. However, the proposed development would have open space to the front and rear and, in my judgement, the size of the plot relative to the size of the proposed dwelling would be acceptable. Given the variety of sizes and forms of existing properties along Blackwater Road, I do not consider that the proposed development would be materially harmful to the character and appearance of the road due either to its plot size or to the extent of built development proposed relative to the size of the plot

- I therefore conclude that the proposed development would not be harmful to and thus would preserve the character and appearance of the Conservation Area. Consequently, I find no conflict in this respect with Policies D10 and D10A of the Eastbourne Core Strategy Local Plan (2013) (ECSLP) or saved Policies UHT1, UHT4 and UHT15 of the Eastbourne Borough Local Plan (2001-2011) (EBLP) which seek to ensure good design that respects local character, protect and enhance, where applicable, significant heritage assets and protect visual amenity. I also conclude that the development would not conflict with Policy D5 of the ECSLP, which supports the delivery of housing or saved Policy HO6 of the EBLP which supports well-designed infill development. I also find no conflict in this respect with paragraph 193 of the Framework regarding designated heritage assets.

Other Matters

- The side elevation of Cornfield Terrace is located on the other side of Blackwater Road to the appeal site. The Terrace is listed as Grade II. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
- The view from Blackwater Road allows an appreciation of the side elevation of Cornfield Terrace. This view would not be interrupted by the proposed development. Given the modest size of the proposed development relative to the side elevation of the Terrace the development would not visually compete with or otherwise distract from Cornfield Terrace. I therefore conclude that the proposed development would not be harmful to the setting of the listed building and would thus preserve that setting. In this respect, the proposed development would not conflict with paragraph 193 of the Framework as regards development affecting the significance of a designated heritage asset.
- The Council acknowledges that it is unable to demonstrate a 5-year supply of deliverable housing sites as required by paragraph 73 of the Framework. From the evidence before me, as at 1 October 2018, the Council could only demonstrate 1.57 years' supply. Therefore, in accordance with footnote 7 of the Framework, the most important policies for determining the application are out-of-date and clause d) of paragraph 11 of the Framework is engaged.
- Under this clause permission should be granted unless either the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- In this case, I have concluded above that the proposed development would not harm either the Conservation Area or the setting of Cornfield Terrace and would thus not conflict with the policy for the protection of designated heritage assets as set

out in paragraph 193 of the Framework. Accordingly, the application of these policies does not provide a clear reason for refusing the development. I have not identified any adverse impacts of granting permission as regards other policies of the Framework that would significantly and demonstrably outweigh the benefits of an additional dwelling. Consequently, under paragraph 11 d), permission should be granted.

- I note that objections were raised to the proposed development by a number of third parties, with common themes being the design of the proposed dwelling and the effects on the Conservation Area, air quality and circulation, the living conditions of the occupiers of neighbouring and nearby properties and car parking. I consider the design of the proposed development to be acceptable in itself and I have considered the effect on the Conservation Area above.
- As regards air quality, I have little evidence of the causes of air pollution in Eastbourne and I am not persuaded that the proposed development would significantly add to this pollution, either by itself or in combination with the permitted flats at St Andrew's URC Church. I have no evidence that it would disrupt the flow of air in nearby gardens such as to be harmful to the enjoyment of these gardens by their owners.
- The only windows in the south elevation facing the rear gardens of the properties on Chiswick Place and No 27 are at ground floor level and at high level above head height. Accordingly, the development would not result in significant additional overlooking and loss of privacy for the occupiers of neighbouring and nearby dwellings and their gardens. Although the high-level window might lead to some perception of being overlooked, this would principally be limited to the ends of the gardens of the properties neighbouring No. 8. I have no evidence that the windows in the rear elevation of the proposed dwelling would allow harmful levels of additional light, smells or noise to emanate from the proposed dwelling given the existing residential nature of the area, street lighting and traffic on Blackwater Road and Chiswick Place.
- Given the extent of the openness to the rear of Chiswick Place, the proposed development would not result in an unacceptable loss of light to neighbouring and nearby dwellings or their gardens. Whilst the development would block some views from neighbouring and nearby properties, the planning system does not operate to protect private interests such as private views.
- The proposed development would result in the loss of off-road parking spaces. However, from the evidence before me, the garage and hardstanding are currently used by a third party not associated with any of the surrounding properties. Accordingly, the loss of the appeal site would not create a demand for additional parking in the vicinity. Even if it did, I have no persuasive evidence that this would be harmful to highway safety or the living conditions of the occupiers of surrounding dwellings. The appeal site is within walking and cycling distance of a range of facilities and services in the town centre and the proposals include a cycle storage facility. There is thus the opportunity for the proposed development to be car free.
- In response to the other concerns raised, as the site currently accommodates a garage and hardstanding, the proposed

development would not result in the loss of any garden area for No. 8 or any other property. I have no evidence that the appeal site is of particular archaeological interest. The attachment of the proposed dwelling to No. 27 and potential damage to the existing walls would be private matters between the parties involved and are outside the scope of this appeal. The granting of permission for this development would not set a precedent for further development in the rear gardens of 2 – 7 Chiswick Place as the site before me is previously-developed land with a road frontage, which differentiates it from these rear gardens.

Conditions

- I have based the conditions attached to this permission on those suggested by the Council with some amendment in the interests of consistency. Planning permission is granted subject to the standard 3-year time limit condition. It is also necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
- A Construction Management Plan is necessary in the interests of highway safety and the living conditions of the occupiers of nearby dwellings. It is necessary for this to be a pre-commencement condition to ensure that the Plan covers demolition and site clearance. Conditions regarding materials and details of windows and doors are necessary in the interests of the character and appearance of the proposed development, of the area and of the Conservation Area. Conditions regarding surface water drainage are necessary to reduce the risk of flooding and pollution.
- Condition 8 is necessary to safeguard the living conditions of the occupiers of neighbouring properties. Conditions 9 and 10 are necessary to safeguard the character and appearance of the area and the living conditions of the occupiers of neighbouring properties with the restriction of permitted development rights for the extension, enlargement or alteration of the proposed dwelling being justified by the restricted size of the site and proximity to neighbouring dwellings.

Conclusion

- In reaching my decision, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and had special regard to the desirability of preserving the setting of the listed Cornfield Terrace. I have concluded that the proposed

Planning Application No	Authority	Site	Description of Development	Decision
190437	EBC	8 Chiswick Place	Costs Decision	D 03 January 2020

Inspector's Reasoning

- Paragraph 030 of the Government's Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
- The application for a full award of costs is made following the refusal of planning permission for the demolition of existing single storey garage and construction of two-storey house within the existing site boundary walls.
- The applicant has not explained in what way the applicant considers the Council was inconsistent in the way it dealt with the application. I note that the Council has previously refused to grant planning permission for development on the appeal site, both for reasons that included the effect of the development on the character and appearance of the Town Centre and Seafront Conservation Area. Although, from the evidence before me, the proposal before me differs from these previously refused proposals and I have found it to be acceptable, this does not necessarily indicate that the Council has been inconsistent in its approach. I therefore find that the Council has not acted unreasonably in its handling of the application in this respect.
- The applicant's appeal statement indicates that over three months elapsed between the request for pre-application advice and a formal acknowledgement of that request, which I consider to be an unreasonable delay. However, a response from the Council was received after two months and the Council did offer a pre-application meeting. Accordingly, I do not find the Council's behaviour overall in this respect to be unreasonable. Even if I had, the applicant has not demonstrated that the delay in arranging the meeting has led to any additional costs being incurred in the appeal process.
- The applicant maintains that had the pre-application advice been consistent the cost of making the planning application could have been avoided. However, from the evidence before me, one pre-application meeting was held which was the only source of pre-application advice. Although the applicant considers the discussions at the meeting to have been positive, the only evidence I have of those discussions is the email from the Council's Planning Consultant to the applicant's architect of 11 June 2019. From this it is apparent that the Council had concerns with the pre-application proposal. Nevertheless, the applicant decided to submit the planning application. Even if I was to accept the applicant's contention on this point, costs can only be awarded in respect of costs necessarily and reasonably incurred in the appeal process, not for the costs of the planning application.
- The emails between the Council's Planning Consultant and the applicant's architect submitted as part of the applicant's appeal evidence confirm some discussion following the submission of the planning application regarding materials and a minor amendment to the drawings to achieve consistency. However, the email from the Council dated 24 July 2019 identifies the broad conclusion of the refusals of the previous applications that, in the Council's opinion, the site is unsuitable in

principle for a new dwelling.

- The Council had identified the need to take the issues with the previous refusals into account in its email of 11 June 2019. I therefore consider that the Council did not act unreasonably in raising this objection to the principle of the development during the course of the determination of the application. Even if I did consider it unreasonable, I have no evidence that it led to any additional costs being incurred in the appeal process.
- Although the applicant was willing to discuss the Council's concerns further, with such a fundamental objection in principle I consider it improbable that any further discussion would have overcome the Council's concerns and resulted in the granting of permission. I therefore consider that the Council did not act unreasonably in refusing to discuss it further.
- Following the refusal of the application and in full knowledge of the Council's concerns, it was the applicant's decision to submit an appeal. Parties in planning appeals are normally expected to meet their own expenses.

Conclusion

- I therefore find, for the reasons given above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in this appeal.
- The application for the award of costs is therefore refused.

Planning Application No	Authority	Site	Description of Development	Decision
190843 Enf: 123178	EBC	26 Mountbatten Drive	Fence erected without planning permission	D 20 January 2020

Inspector's Reasoning

- I note that since the enforcement notice was issued, a regularising planning application was submitted to the Council (PC/190648) to retain the fence. This application was refused on 22 October 2019. I have had regard to this decision and the Council's reasons for issuing the notice. I therefore consider that the main issue is the effect of the development on the character and appearance of the area.
- The appeal site is a single storey dwellinghouse sited on the corner of Mountbatten Drive and Beatty Road. The immediate area comprises detached bungalows of similar scale and design, set within small front gardens. The frontages of the bungalows are characterised by generally low boundary walls giving an attractive open appearance to the area. From the evidence I have before me, prior to the construction of the fence, the appeal site followed this general pattern of development, contributing to the open and spacious character of the area, on this important corner plot.
- It was clear from my site visit, that the fence exceeds one metre in height and has been constructed immediately behind the

low brick wall that marks the boundary. It is of timber construction and surrounds the front garden of the site. To my mind it has an enclosing effect, obscuring views of the bungalow and the garden. Rather than providing screening, the siting of the fence behind the original brick wall, draws attention to its existence. This is particularly apparent when travelling south east down Mountbatten Drive towards Beatty Road.

- I acknowledge that the fence has been provided to give some privacy and security for the owner's pets. However, the height and design of the fence, together with the materials used and its proximity to the highway, results in an overly stark, dominant and incongruous feature, that is significantly at odds with the open and spacious character of the surrounding area.
- For the above reasons, I find that the development significantly harms the open and spacious, character and appearance of the area, due to its height materials and design. It therefore conflicts with Policy D10a of Eastbourne Core Strategy Local Plan (2013) (the CS), and saved policies UHT1 and UHT4 of the Eastbourne Borough Plan (2001-2011) (2007). These policies when taken together, seek to ensure that new development makes a positive contribution to the appearance and context of the townscape, by harmonising, respecting, preserving or enhancing local character and distinctiveness.
- I note the appellant's concern about the relevance of Policy DA10 of the CS to this appeal. Both the reasons for issuing the notice and the decision to refuse planning permission, refer to Policy D10a of the CS. I acknowledge that this may be a typing error on the part of the appellant. Nonetheless, I have considered this policy in the context of this appeal. Whilst I acknowledge that the site does not lie within a conservation area or affect any listed buildings, I consider that this design based policy is relevant to the determination of this appeal.

Other Matters

- My attention has been drawn to other examples of similar boundary treatments in the area and observed several of these at my visit. I do not have any information about the relevant planning history or circumstances for these sites. From my observations, some appear to integrate more successfully than others. In any event, I have to determine this appeal on its own planning merits, and their presence would not justify granting this appeal. Overall, I consider that granting a further inappropriate boundary treatment, would further erode the sense of space and cohesion of the area.
- I note the appellant's concerns that it has taken some time for the Council to serve the enforcement notice. S172(1)(b) empowers a Council, as the local planning authority, to issue an enforcement notice, when it appears to them that there has been a breach of planning control and they consider it expedient, having regard to the provisions of the development plan and other material considerations.
- This is a discretionary power and it is for the Council to decide whether it is expedient and proportionate to issue a notice. I am satisfied that in this instance, there was a breach of planning control and the Council's decision to exercise their discretionary powers to issue the enforcement notice in April 2019, and sometime after the breach was first identified, did not

amount to acceptance of the unauthorised development, or fetter their right to issue the notice.

Conclusion

- 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.

Planning Application No	Authority	Site	Description of Development	Decision
180068	EBC	2 Old Camp Road	Application for a Lawful Development Certificate for use of land to station a mobile home/annexe for use incidental to the main dwelling house.	A 06 February 2020

Inspector's Reasoning

- The appeal property is a substantial detached house with a generous garden in a residential road in Eastbourne. The appellants consist of an elderly couple who presently live in the main house and their daughter and her husband. They are hoping to have a 'twin unit' mobile home stationed in the rear garden of the property to provide annexe accommodation for the older couple.
- They state that the couple using the mobile home will be cared for and supported by their daughter and son-in-law and, whilst sleeping in the annexe, will still use the main house for meals, laundry facilities and socialising as a family. This arrangement would mean that the use of the site would remain as a single dwellinghouse, with the mobile home providing ancillary accommodation.
- The appellants also submit that the mobile home that they are hoping to install meets the definition of a twin-unit caravan as defined by Section 29(1) of the Caravan Sites & Control of Development Act 1960 (CSCDA). This definition includes *'any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer)'*.
- Section 1 of the first Schedule of the CSCDA states that a site licence is not required for the use of land as a caravan site if the use is *'incidental to the enjoyment as such of a dwellinghouse within the curtilage of which the land is situated'* and, as noted above, the Council has accepted that this applies to the smaller unit. The appellants submit that the larger unit can also therefore be lawfully stationed on the site to provide ancillary residential accommodation in association with the main house.
- Limits on the size of twin-unit caravans are found in Sections 13(1) & (2) of the Caravan Sites Acts 1968 (as amended) (CSA) and they must not *'exceed any of the following limits, namely:- (a) length (exclusive of any drawbar):- 65.616 feet (20m); (b) width:- 22.309 feet (6.8m); (c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level):- 10.006 feet (3.05m)'*.

- Also, they must be *'composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices'*. The fact that the unit may not be able to be lawfully moved on a highway does not prevent it from being classified as a caravan, it just needs to be physically capable of being so moved.
- The appellants note that the mobile unit proposed in the appeal scheme and the smaller one subsequently granted an LDC are both twin-units. The only difference between the two applications is that the appeal unit would be longer but, as accepted by the LPA, its dimensions also fall within the maxima provided by the CSA. However, the Council is concerned that the larger unit would not meet the construction and mobility tests as set out in the CSA and that it would be too large to be properly considered as incidental to the main dwelling.
- The submitted plans show that it would be about 6.3m wide, 18.3m long and have a maximum internal floor to ceiling height of 3.027m and would therefore meet the size requirements for a twin unit caravan in the CSA.
- The appellants have provided confirmation from a structural engineering company that the twin-unit mobile home proposed for this site could be craned into position in 2 pieces which are designed to then be joined together on site, thereby meeting that requirement of the CSA. They also confirm that the unit, once assembled, could again be craned off the site in one piece. The Council, nevertheless, still questions whether this would be possible and states that the appellants have given insufficient details as to how this would be achieved.
- In response, the appellants draw attention to another appeal decision2 where permission was granted for a unit in 2 sections which had originally been fabricated in a factory but '*after ascertaining that access to the site was not conducive to delivery in two sections, it was taken apart and transported to the site in smaller segments. It was then re-assembled into two sections which were bolted together in the conventional way envisaged by section 13.* The Inspector found: '*That would meet the provision in section 13 for the final two sections to be assembled on site.*'
- However, there are other decisions that take an opposite view and I am not persuaded that the meaning of the CSA necessarily envisages the operation described in the above paragraph. If it did, there would seem to be no reason for the specific requirement to have a unit limited to 2 sections which are assembled on site. It therefore seems to me that, if it proved impossible to lift the 2 halves of the proposed unit over the existing house by crane, the unit would not meet the definition of a 'caravan'.
- Nevertheless, it has not been shown that this could not be achieved and, as noted above, the ability to do so would be a prerequisite of the issue of a LDC. If the proposed unit proved not to be able to meet the practical requirements of the CSA, it would not be covered by the LDC and could be required to be removed. With respect to whether it could be moved by road, the CSA definition covers caravans larger than proposed here, and the implication is that units of such size can be capable of being moved by road, otherwise the definition would be meaningless. I have been given nothing to suggest that the unit proposed could not be transported by road as required by the CSA.
- The Council also consider that, having granted a LDC for a smaller unit, there is no evidence that a larger one is genuinely

required or could be considered *'incidental'* to the main house.

- The appellants point out that the mobile home would be used in the same way in both situations and would remain subservient to that of the main dwelling. To counter the Council's assertion that the main house could provide all essential accommodation, they have also explained in detail why an annexe is needed to meet the requirements of the whole family. The only real difference between the 2 proposals would be the provision of a greater level of comfort for the occupants of the caravan. This must be a matter of some importance for them, given that they would be moving out of a much larger property in order to allow their close family to move into it and take care of them.
- This does not seem to me to be unreasonable in their situation and, given the comparative size of the house and its garden, the larger unit seems to me to be a proportionate addition that would not be overly dominant and still be incidental to the residential use of the house. I therefore see no reason why a larger unit should be refused a certificate in this situation.

Conclusion

- For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the stationing of a mobile home/annexe for use incidental to the main dwelling house was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Planning Application No	Authority	Site	Description of Development	Decision
190391	EBC	126 Seaside Road	Replacement of an existing illuminated 48-sheet advertisement display with an illuminated 48-sheet digital advertisement display	A 27 February 2020

Inspector's Reasoning

- The proposed digital advertisement display would replace an externally illuminated poster hoarding on the flank wall of 126 Seaside Road. The appellant contends that the existing advertisement is lawful and displayed with 'deemed consent' under Class 13 of Schedule 3 of the Regulations, the site having been in advertising use since 2003. The Council does not contest this and has not given any indication that it would serve a discontinuance notice in the event of this appeal being dismissed. The evidence suggests that the existing hoarding is a long-established and accepted part of the built environment.
- The area to the east of the site is predominantly residential, with a flatted block known as Bourneside Court lying directly opposite. However, the proposed advertisement display would be mainly visible in westerly views towards a secondary shopping area, where it would be seen in the context of retail and other commercial premises at street level. Large format advertising is not characteristic of the locality, but the proposed display would add visual interest to what would otherwise be a blank wall. In this regard, it would be no different to the existing poster hoarding.
- The proposed digital display would be of near identical size and mounted in the same position as the existing advertisement.

It would be framed against the end of the building terrace. Seen in the context of commercial signage on Seaside Road to the west, it would not be discordant or out of character. Neither would it contribute to visual clutter or an unnecessary proliferation of signage when compared to the present situation.

- One of the principal matters of contention is that of illumination. The current advertisement is externally illuminated, whereas the proposal is for a modern digital LED display. In response to the Council's concerns, the appellant has proposed a reduction in daylight luminance to 300 candela/m2 and is prepared to cut the night luminance to 100 candela/m2. These figures are significantly below the recommended maximum luminance of 600 candela/m2 set out for urban areas in guidance published by the Institute of Lighting Professionals1. It is also proposed to set the time of operation to between 0600 and 2300 hours and to restrict the display to static images without special effects.
- The Council contends that the luminance would have a significant impact on the occupiers of Bourneside Court in terms of light pollution. Although the sign would be visible to neighbours, the impact would not be significantly different to the existing poster display, albeit the illumination would be more consistent across the display. The measures proposed by the appellant in terms of luminance levels and the timing and method of operation would be sufficient to ensure that there is no harm to the living conditions of adjoining residents, most of whom are likely to have their curtains and blinds shut after dusk in any event.
- The site lies within the Town Centre and Seafront Conservation Area. The Council's own character appraisal identifies the most significant features of this character area as the oldest part of Eastbourne town, 18th century buildings, the pier and the mixed commercial and residential uses. The most notable listed building nearest the site is the Royal Hippodrome theatre. The proposal would not have any adverse impact on the setting of this building, or the heritage significance of this part of the Conservation Area. The character and appearance of the Conservation Area as a whole would be preserved.
- The Council has drawn my attention to those policies of the Eastbourne Borough Plan which it considers to be relevant to this appeal. Whilst not decisive, I have had regard to these policies as material considerations.
- Accordingly, I conclude that the proposed advertisement would not cause undue harm to amenity. Subject to the imposition of appropriate conditions, a grant of express consent is justified.

Decision APP/T1410/Z/19/3238250
https://www.gov.uk/planning-inspectorate 3

SCHEDULE OF CONDITIONS

1) Express consent is granted for a period of 5 years from the date hereof.

2) Illumination of the advertising unit shall be a maximum of 300 candela/m2 during daylight and 100 candela/m2 at night. The display shall be switched off between the hours of 2300 and 0600.

3) The minimum display time for each advertisement shall be 10 seconds and there shall be no special effects (including noise, smell, smoke, animation, flashing, scrolling, intermittent or video elements) of any kind before, during or after the display of any advertisement.

4) The sequencing of messages relating to the same product is prohibited.

5) The interval between successive displays shall be 0.1 seconds or less. The complete display screen shall change without any visual effect. between each advertisement.

6) The advertising display panel shall have a default mechanism to freeze an advertisement in the event of any malfunction.

The Standard Conditions

7) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.

8) No advertisement shall be sited or displayed so as to—

   a) Endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);

   b) Obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or

   c) Hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.

9) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.

10) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

11) Where an advertisement is required under the Regulations to be removed, the site shall be left in a condition