
Appeal Decision

Site visit made on 30 August 2016

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 September 2016

Appeal Ref: APP/G1250/W/16/3150328
55 West Cliff Road, Bournemouth BH4 8BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Medi Vahdati against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-6469-G, dated 10 February 2016, was approved on 19 April 2016 and planning permission was granted subject to conditions.
 - The development permitted is alterations and single storey rear extension to hotel-existing unauthorised.
 - The condition in dispute is No 3 which states that:
'3. No plant equipment, including commercial kitchen fume extraction or ducting, air conditioning units, or condenser/ chiller units shall be installed in the development hereby approved without the grant of further specific planning permission from the local planning authority.'
 - The reason given for the condition is:
'In order to protect the environmental amenities of the immediate locality due to the close proximity to residential properties, and in accordance with policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).'
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Decision

1. The appeal is allowed and the planning permission Ref 7-2016-6469-G for alterations and single storey rear extension to hotel-existing unauthorised, granted on 19 April 2016 by Bournemouth Borough Council, is varied by deleting condition 3 and substituting for it the following condition:

'3. No external plant or equipment, including commercial kitchen fume extraction or ducting, air conditioning units, or condenser/ chiller units shall be installed in the development hereby approved without the grant of further specific planning permission from the local planning authority.'

Preliminary Matters

2. The Council have explained that the application was, in part, made retrospectively for development which had been commenced at the time that the application was made. The development is a single storey extension to the property which includes the rebuilding of a pre-existing outbuilding connected to what is presently the kitchen area of No 55. At the time of my site visit this development appeared substantively complete, with the extension in active use for the storage of various items and stock related to the kitchen.
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3. The kitchen apparently serves both the hotel and restaurant within the property which are separately advertised on the exterior of No 55. For the avoidance of doubt I have determined this appeal with reference to the information which formed the basis of the Council's decision, namely that the use of this extension is in connection with the established hotel use of the property; there is no alternative or more specific description of its use indicated in the information before me.
4. The Council have explained that the appellant has separately unsuccessfully sought planning permission for extraction equipment associated with No 55. This appears to be a distinct proposal from the development before me in this appeal, and as such it has not influenced my decision.
5. Section 79(1) of the *Town and Country Planning Act 1990* as amended (the '1990 Act') makes provision for an appeal made under Section 78(1)(a) thereof, as is the case here, to be allowed, dismissed, or any part of the decision of the local planning authority reversed or varied. However, the only matter in dispute is condition 3 and the Council have no objection to other aspects of the development, subject to the imposition of conditions. This includes that, on account of its modest scale and limited prominence, the development would preserve the character and appearance of the surrounding Westbourne Conservation Area.
6. Whilst I have taken into account the various representations made by nearby residents in relation to other potential effects of the development, I have no reason to disagree with the Council's assessment of the proposal in other respects, and have therefore dealt with the appeal on this basis.

Main Issue

7. Section 70(1)(a) of the 1990 Act makes provision for a local planning authority to grant permission subject to such conditions as they think fit. However paragraph 206 of the *National Planning Policy Framework* (the 'Framework') establishes that planning conditions should only be imposed where they meet the tests of being necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.¹
8. The appellant contends, in essence, that condition 3 is unnecessary, not fairly related to the development permitted and thereby unreasonable, and furthermore imprecisely worded. Therefore on the basis of the information before me the main issue in this appeal is whether condition 3 as worded is necessary, fairly related to the development permitted, reasonable and precise, with particular regard to the living conditions of the occupants of nearby properties in respect of noise and odour.

Reasons

9. No 55 is a grand semi-detached property in use as a hotel located within a predominantly residential and comparatively dense historic area of Bournemouth. The rear plot associated with No 55 is presently almost entirely occupied by the built form of the property including the extension to which this

¹ Further detailed in the *Planning Practice Guidance* (the 'Guidance') at Reference ID: 21a-004-20140306.

appeal relates. The plot cuts diagonally behind that which is associated with the neighbouring dwelling, No 53, such that the extension is in close proximity to the rear elevation of that property which contains windows at first and second floor level.

10. Similarly the extension is very near to a window within the western side elevation of No 53a, an historic property which appears to be subdivided into several holiday cottages. An elevation of 'The Chines', a purpose-built complex of flats of comparatively modern appearance, which also includes several windows, is also nearby to the north of the appeal site. Although some of the windows in these surrounding properties may serve functional areas rather than habitable spaces, there are nevertheless residential properties in close proximity in all directions to the rear of No 55 containing windows that face the extension. Given the relatively dense residential nature of the area, outside spaces associated with properties, including Nos 53 and 53a are typically modest.
11. Policy CS38 '*Minimising Pollution*' of *Bournemouth Local Plan: Core Strategy*, adopted in October 2012 (the 'Core Strategy') sets out that development will be required to '*minimise potential pollution*' including in respect of noise and odour, in order to protect environmental quality, human health and safety and general amenity. More generally policy CS41 '*Quality Design*' of the Core Strategy requires that all development should be well designed, including in respect of its relationship with its surroundings.
12. Similarly the *National Planning Policy Framework* (the 'Framework') sets out that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.² Whilst the Framework establishes that investment in business should not be over-burdened by the combined requirements of planning policy expectations, it nevertheless sets out that planning should aim to avoid noise from giving rise to significant adverse impacts on quality of life, and to mitigate and reduce to a minimum adverse impacts arising from noise (including through the use of conditions).³ It further makes clear that all new development should be appropriate for its location in respect of pollution, including odour.⁴
13. The development entails the rebuilding of the pre-existing outbuilding and its connection with the existing single-storey flat roofed element to the rear of No 55 which hosts its kitchen. The Council sets out in their officer report associated with the original application, and the appellant appears not to dispute, that the extension would amount to approximately 38 square metres of floorspace which is broadly equivalent to a third of the existing ground floor footprint of the property.
14. The appellant explains that the pre-existing outbuilding was formerly used in connection with the hotel, and contends that as such plant and equipment could have been installed here without such limitations as are imposed by condition 3. However there is no evidence before me to definitively establish this position, such as a certificate of lawfulness. The plans supporting application Ref 7-2016-6469-G include reference to rebuilding this structure,

² Bullet point 4 of paragraph 17.

³ At paragraph 21 and bullet points 1 and 2 of paragraph 123.

⁴ At paragraph 120 and with reference to the definition of pollution within Annex 2 of the Framework.

and hence it is clearly part of the development for which permission was originally sought and cannot therefore reasonably be considered a distinct element of the property. The development significantly enlarges the functional space of the property directly connected with its kitchen for purposes which the appellant describes in his appeal statement '*so that the catering facilities could be upgraded*'.

15. As a consequence, and notwithstanding that no plant equipment has been proposed related to the extension as part of the original application or appeared to be present at the time of my site visit, the proposal materially increases the likelihood of plant equipment being necessary or desirable here given the use to which the extension is put. Moreover, provided the use of the space remains within use as part of the hotel use of the property, there are no restrictions that can reasonably be emplaced upon the use of that space or the intensity of use. Given the close proximity of residential uses to the extension as identified above, there is consequently clearly the potential for insensitively designed or inappropriately located plant equipment in this location to adversely affect the living conditions of those nearby in relation to noise and odour.
16. I acknowledge that development that materially affects the exterior of a property may require planning permission in any event. However commercial kitchen fume extraction or ducting, air condition units, and condenser and chiller units may not materially affect the exterior of a property by virtue of their minor external appearance, but nonetheless result in noise and odour effects which are proper to address through planning. Whilst there powers to address statutory nuisance resulting from noise and odour that apply independently of planning,⁵ nevertheless noise and odour which is not significant enough so as to amount to a statutory nuisance may still compromise living conditions (as affirmed by relevant elements of the Framework set out above). As such neither future applications nor environmental protection legislation can in my view be relied upon in this instance to ensure that unacceptable impacts are avoided.
17. The appellant further expresses concern that condition 3 as worded may unreasonably prevent the installation of certain equipment related to the commercial use of No 55 such as freezers. However, the condition relates to plant equipment of a commercial nature and is justified on the basis of safeguarding the living conditions of those nearby. Therefore facilities such as internal refrigeration units which are not inherently of a commercial scale, or which do not materially affect the level of noise or odour emitted would consequently not be subject to the requirements of condition 3. Nevertheless I appreciate that this concern appears to result from the wording of condition 3, in that it applies to all plant and equipment rather than specifically to that which would be installed externally. For this reason condition 3 is presently imprecisely worded and should be amended accordingly in order to allow reasonable flexibility for the extension to be used in association with No 55 without disadvantaging those nearby.
18. On this basis, and subject to an amendment to clarify its application to external plant or equipment, I find that condition 3 is necessary, fairly related to the

⁵ With reference to Sections 79 and 80 of the Environmental Protection Act 1990

development permitted, reasonable and precise with particular regard to the living conditions of nearby properties in respect of noise and odour. Consequently an amended condition 3 would accord with the relevant provisions of policies CS38 and CS41 of the Local Plan and with relevant elements of the Framework and the Guidance.

Conclusion

19. For the above reasons, and taking all other matters into consideration, I therefore conclude that the appeal should be allowed but only in respect of ensuring that the relevant condition is precise as set out in this decision.

Thomas Bristow

INSPECTOR