



Appeal Decision

Site visit made on 15 May 2018

by Stephen Hawkins MA MRTPI

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

Decision date: 31 May 2018

Appeal Ref: APP/G1250/C/17/3190970

249 Charminster Road, Bournemouth BH8 9QJ

- 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 M Hallak against an enforcement notice issued by Bournemouth Borough Council.
- The enforcement notice was issued on 4 December 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey extension to the rear of the property.
- The requirements of the notice are to dismantle the extension including all foundations, break up the concrete base, remove all resultant materials and return the land to the original soil levels.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Background

1. The appeal property comprises a detached building containing two flats situated in a row of detached properties of similar scale. A mature Oak tree overhangs part of the property's rear garden. The Oak is subject to a Tree Preservation Order (TPO)¹. The ground floor flat has been enlarged by demolishing a conservatory and detached garage, digging out part of the rear garden and erecting a flat roofed single storey rear extension.
2. The appellant has made a separate appeal against the Council's refusal of planning permission for the extension². That appeal has only recently been validated. In the event that planning permission was subsequently granted for the extension, the requirements of the notice would cease to have effect insofar as they are inconsistent with that permission by virtue of s180 of the Act.

Ground (f) appeal

3. According to Section 173 of the Act, there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173 (4)

¹ Tree Preservation Order 1107/2016: Land at 233 and 253 Charminster Road, Bournemouth.

² Ref: APP/G1250/W/17/3190585.

- (a)) is to remedy the breach of planning control that has occurred. The second (s173 (4) (b)) is to remedy any injury to amenity caused by the breach.
4. The Council did not specify which of the above purposes it sought to achieve in the enforcement notice. However, the reason for issuing the notice concerns the effects of the extension on the character and appearance of the area, including the effect on the TPO Oak tree. The notice requires the extension to be demolished, removal of the associated materials and reinstatement of the former land levels. Had the purpose of the notice simply been to remedy an injury to amenity, it would have required the extension to be reduced in size. Consequently, the purpose of the notice must be to remedy the breach of planning control by restoring the land to its condition before the breach took place under s173 (4) (a).
 5. This ground of appeal concerns whether 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. As the purpose of the notice is to remedy the breach it falls within the first part of the ground of appeal.
 6. The appellant has not explained why they believe that the steps in the notice are excessive for the purpose of remedying the breach. As there is no ground (a) appeal, the planning merits of the extension are not before me and what I can consider by way of an alternative to the notice requirements is more limited. Accordingly, it seems to me that remedying the breach can only be accomplished in this case by demolition of the extension, removal of the associated materials and reinstating the former land levels as set out in the requirements of the notice. Whilst a neighbour is concerned that part of their boundary might be removed if the extension were demolished, that is a private matter.
 7. Consequently, the requirements of the notice do not exceed what is necessary to remedy the breach and the ground (f) appeal must fail.

Ground (g) appeal

8. This ground of appeal concerns whether the time given to comply with the requirements of the notice is too short. The notice specified a two month compliance period.
9. There is no certainty in terms of the timescale involved or the potential outcome of the planning appeal in relation to the extension. Similar considerations would apply to any subsequent amendments including remedial works stopping short of the notice requirements. Therefore, extending the period for compliance to 6 January 2019 would perpetuate the harm identified in the notice.
10. Nevertheless, as the extension provides a new kitchen and an enlarged living room and bedroom for the flat, I am mindful that its demolition would be likely to cause considerable disruption to the appellant's home. Consequently, in my view a six month compliance period would be more reasonable. This is in order to strike the appropriate balance between remedying the planning harm whilst minimising the burden placed on the appellant. Also, within that period the planning appeal for the extension could potentially have been decided, thus

providing the appellant with greater certainty. As a result, to this limited extent the ground (g) appeal succeeds.

Formal Decision

11. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 2 months and the substitution of 6 months for the period for compliance. Subject to these variations the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR