



Appeal Decision

Site visit made on 7 August 2018

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2018

Appeal Ref: APP/G1250/C/17/3191863

Land at 119 Southbourne Overcliff Drive, Bournemouth BH6 3NP

- 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 I Parsons against an enforcement notice issued by Bournemouth Borough Council.
- The enforcement notice was issued on 21 November 2017.
- The breach of planning control alleged in the notice is failure to comply with a condition of a planning permission Ref 7-2012-24230-C granted on 28 March 2012.
- The development to which the permission relates is minor material amendment to application 7-2010-24230-B to vary condition number 1 to amend floor plan and elevations to show altered ground floor bay window, altered design of garage and the installation of an additional first floor window to the rear elevation with privacy screens. Relief of condition 4 regarding prior approval of materials.
- The condition in question is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan 1:1250, 2163c Rev S amended elevations and amended floor plan.
- The notice alleges that the condition has not been complied with in that the roof structure has not been erected and external walls have not been rendered as indicated on the approved amended elevational drawing.
- The requirements of the notice are: Erect the roof structure and finish using materials as indicated on drawing 2163c Rev S amended elevations. Render the external walls of the building using materials as indicated on drawing 2163c Rev S amended elevations.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d) 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 is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Preliminary Matter

1. The enforcement notice states that the breach of planning control falls within paragraph (a) of s171A (1) of the Act. Paragraph (a) refers to carrying out development without the required planning permission. As the notice is alleging a breach of a condition attached to a planning permission, it should have referred to paragraph (b) of s171A (1) instead. Also, in the description of the alleged breach, the notice wrongly referred to a breach of condition 1 instead of condition 2. However, the notice clearly describes the nature of the alleged breach, including a recital of the full text of condition 2. The steps required to remedy the breach are clearly set out. Therefore, the appellant could have been in no doubt as to what the Council considered he had done

wrong and what he had to do to remedy the matter. Consequently, there would be no injustice caused if I were to correct the notice to refer to paragraph (b) of s171A (1) and to refer to condition 2.

Application for costs

2. An application for costs was made by Mr I Parsons against Bournemouth Borough Council. This application is the subject of a separate Decision.

Ground (c) appeal

3. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control.
4. In October 2010, planning permission was granted for erection of a dwelling at the appeal property¹. In March 2012, planning permission was granted for a minor material amendment to the plans and elevations of the dwelling and relief of condition 4 of the 2010 permission concerning the external materials used. Condition 2 of the 2012 permission required development to be carried out in accordance with an approved plan reference 2163c Rev S². The approved plan shows a dwelling arranged over three floor levels with rendered walls and a hipped roof form over, covered with artificial slates.
5. The external walls of the dwelling have been constructed up to the eaves level. The external walls are comprised of polystyrene insulation blocks, the joints between which are filled with an expanding material. No rendered finish has been applied to the surface of the blocks. There is also no hipped roof structure above the eaves level. Instead, hardboard covered with plastic sheets, held in place by scaffolding poles bricks and timber, provides a flat roof treatment at what would have been the second floor level. These external wall and roof surfaces form the basis of the Council's allegation that the dwelling as built does not accord with the approved plan in breach of condition 2.
6. The external walls and roof aside, the remainder of the dwelling has been built out in accordance with the approved plan. The dwelling is still capable of being completed in accordance with that plan. I am given to understand that no completion certificate has been issued under the Building Regulations. As insulation blocks generally form part of the interior of a building fabric it is unlikely that they would provide a fully weatherproofed surface for the external walls. Utilitarian, functional building materials and components comprise a rather makeshift roof treatment. Therefore, it seems to me that the current wall and roof materials provide little more than a temporary solution to the weatherproofing of the dwelling. Consequently, the current external appearance of the dwelling is unlikely to represent its finalised external wall and roof treatments. As a result, at present the wall and roof materials are not conclusive of a dwelling which has been substantially completed. Rather, they suggest to me that ongoing building operations are still being undertaken forming a part of the construction of the approved dwelling as a whole.
7. I accept that construction of the dwelling commenced more than five years before the notice was issued, that the appellant previously indicated that the walls would be rendered and the roof structure completed in accordance with the approved plan by October 2016 and that subsequently no timescale for

¹ Council Ref: 7-2010-24230-B.

² Council Ref: 7-2012-24230-C.

completion of the outstanding wall and roof works had been put forward by him. However, condition 2 does not impose a time limit for substantial completion of the dwelling. Ultimately therefore, the appellant is not bound by his previous suggestions regarding when the outstanding external works might be completed.

8. Moreover, I note that the appellant appears to be undertaking much of the construction work himself. Therefore, progress on completing the dwelling is likely to be considerably slower than it would have been if building contractors had been engaged. I also note that condition 3 of the permission restricts working on the dwelling in the evenings and at weekends. Whilst the appellant could have applied to the Council to vary the above condition to facilitate longer working hours, he could have had no assurance that such an application would have been approved. Additionally, although the weather may well have been favourable during the late spring and summer this year, the dwelling is in an exposed coastal location. Therefore, poor weather conditions, particularly during recent winters, are likely to have had an effect on the appellant's ability to carry out external works to the dwelling and to maintain any scaffolding and protective sheeting required in order to undertake such works. The appellant's redundancy would also almost certainly have had an adverse effect on his finances and in turn slowed down the progress of the works. Accordingly, none of the above factors supports the Council's case that the dwelling has been substantially completed other than in accordance with the approved plan.
9. As a result, I am of the view that as it stands, the structure is not the same as that shown on the approved plan because it is part of an ongoing building operation forming a part of the construction of the approved dwelling as a whole. My view in this respect is reinforced by the remedial steps in the notice, which require only positive works to be carried out to comply with terms of the planning permission, as opposed to the removal of any unauthorised wall or roofing materials.
10. Consequently, whilst I fully appreciate the desire of the Council and interested local residents to see the dwelling built out as shown on the approved plan sooner rather than later, there is no firm evidence before me to suggest that the current appearance and condition of the dwelling represents its substantially completed state in breach of planning control. I have also noted the comments of both main parties concerning the possible issue by the Council of a completion notice under s94 of the Act. However, the appropriateness of such a course of action is a matter for the Council to consider and would be unaffected by the outcome of this appeal.
11. In reaching the above findings, I am mindful of the appeal decision³ referred to by the Council concerning an extension to a dwelling erected other than in accordance with an approved plan elsewhere in the Borough. However, in that case the extension had clearly been finished and the appellant had no intention of undertaking the additional works to accord with the approved plan. Therefore, the circumstances in that appeal are materially different to the situation in this case.
12. For the above reasons I conclude that, on the balance of probability, there has not been a failure to accord with the approved plan and therefore, there has been no breach of condition 2.

³ Ref: APP/G1250/C/05/2002203.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under grounds (d) and (g) does not need to be considered.

Formal Decision

14. It is directed that the enforcement notice be corrected by deleting the words "paragraph (a) of section 171A (1)" in the second line of paragraph 1 and replacing them with "paragraph (b) of section 171A (1)" and; deleting the words "Condition 1" on the seventh line of paragraph 2 and replacing them with "Condition 2". Subject to these corrections the appeal is allowed, and the enforcement notice is quashed.

Stephen Hawkins

INSPECTOR