



Appeal Decisions

Site visit made on 11 December 2018

by Stephen Hawkins MA MRTPI

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

Decision date: 9 January 2019

Appeal A Ref: APP/G1250/C/17/3188486

Appeal B Ref: APP/G1250/C/17/3188487

Land at Valcourt, 18 Branksome Wood Road, Bournemouth BH4 9JY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr M Bower (Appeal A) and Mrs S Slade (Appeal B) against an enforcement notice issued by Bournemouth Borough Council.
- The enforcement notice was issued on 11 October 2017.
- The breach of planning control as alleged in the notice is without planning permission, in contravention of a Temporary Stop Notice, the undertaking of an engineering operation to alter the level of the land, erection of a retaining wall and creation of a raised planting area and hardsurfaced/parking area.
- The requirements of the notice are: Remove the retaining wooden sleepers, plants and soil from the north-south raised planting area and remove any foundations using hand tools only without damaging any roots of the Tree Preservation Order (TPO) trees. Remove the retaining sleepers on the east-west alignment and remove any foundation using hand tools only without damaging any roots of the TPO trees. Remove the infill soil. Remove the block retaining wall and foundation using hand tools only without damaging any roots of the TPO trees. Remove the stone infill, membrane and any other non-original infill material. Install concrete bollards, to stop the use of the land for the parking of any vehicle, minimum 455mm in height above ground level, at a maximum 1.5 metre centres adjacent to the tarmacked around red hatched area. Foundation holes to be dug using hand tools only without damaging any roots of the TPO trees and holes are to be lined with a plastic barrier to prevent land contamination/root damage. Infill and reprofile the land to its original level with soil to British Standard BS3882:2015 and turf the area to BS3969: 1998+A1:2013. Remove any rubbish and debris from site.
- The period for compliance with the requirements is two months.
- Appeal A 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.
- Appeal B 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 for Appeal B, 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 Decisions: Appeal A—the appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision. Appeal B-I take no further action in respect of this appeal.

Appeal C Ref: APP/G1250/W/18/3196907

Valcourt, 18 Branksome Wood Road, Bournemouth BH4 9JY

- 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 Mr M Bower and Mrs S Slade against the decision of

Bournemouth Borough Council.

- The application Ref 7-2017-4701-R, dated 4 December 2017, was refused by notice dated 16 February 2018.
- The development proposed is alterations to the ground levels to form new hard landscaping area with raised planter and picket fencing partially around the perimeter.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions.

Preliminary Matters

1. One of the requirements of the enforcement notice is to install concrete bollards at 1.5 metre centres, in order to prevent vehicle parking on the relevant part of the appeal property. This is more onerous than restoring the property to its condition before the breach of planning control took place, as there were no such bollards in situ before the breach alleged in the notice occurred. Therefore, I shall correct the notice by deleting the requirement to install bollards. In doing so, I am satisfied that there would be no injustice caused.
2. I have omitted reference to the application in Appeal C being retrospective from the banner heading and in my formal decision. Such a reference is unnecessary as it does not involve an act of development.

Appeal A

Ground (a) appeal

Main Issues

3. The main issues on this ground of appeal are:
 - The effect of the works enforced against on the character and appearance of the area, including the effect on protected trees.
 - The effect on highway safety.

Reasons

Character and appearance

4. The property contains a four storey block of flats. In front of the block are two linked driveways providing a vehicular entrance and exit onto Branksome Wood Road. Between the driveways and the road is a landscaped area, which I understand was mostly a lawn prior to the works being carried out. In this area adjacent to the road are two mature Scots Pine trees protected by a Tree Preservation Order (TPO)¹ and a low evergreen hedge. As ground levels on the property slope gently away from the road, the TPO trees and hedge are at a higher level than the rest of the landscaped area.
5. The block is located in an established residential area in which properties vary in terms of their age, design, scale and materials. Hard surfaced drives and extensive vehicle parking areas occupy most of the space at the front of several properties. Generally, properties have low walls or fences along the frontage, with substantial planting consisting of a mix of mature trees, shrubs and low hedges adjacent to the road. The planting helps to soften the visual impact of the drives and parking areas as well as that of the large built forms

¹ TPO Reference 595/2001.

- behind. Consequently, the planting contributes significantly to the pleasant, sylvan character and appearance of the surroundings.
6. The works included forming a loose gravel hard surface on part of the landscaped area. The hard surface is bisected by a central raised timber planter constructed at a right angle to the road, containing a row of evergreen shrubs. A low timber picket fence encloses the hard surface. A low retaining wall faced with timber sleepers has been constructed between the hard surface and an area of lawn closer to the road. The ground level has also been raised slightly between the retaining wall and the trunks of the TPO trees.
 7. The hard surface is set back from the road at a lower level, behind the lawn area. Together with the screening provided by the frontage hedge, this serves to limit the visual impact of the hard surface in views from the street. Further, the row of shrubs in the central planter assists in breaking up the apparent extent of the hard surface. Just over half of the landscaped area is taken up by the hard surface, which is therefore of modest size when compared with the more extensive driveways and parking areas in front of nearby properties. Also, due to its gravel finish the hard surface has a less harsh appearance compared with the tarmac surfacing typical of surrounding properties. Additionally, the overall area of soft landscaping in front of the block compares favourably with that of other properties in the surrounding area. Due to its limited height, the retaining wall has a negligible visual impact on its surroundings. The picket fence is not dissimilar to some other frontage boundary treatments in the vicinity and it is viewed from the street against a background of more substantial built features.
 8. Moreover, the works have been laid out with a sense of formality which both respects and reflects the well-ordered appearance of the front elevation of the block. Therefore, the works have resulted in a more harmonious and pleasing appearance to the landscaped area when compared with what I understand was previously a rather nondescript and partly eroded lawn surface. For this and the above reasons, I find that the works are not at odds with their surroundings and they do not appear as an alien feature in the street scene.
 9. Parts of the hard surface and the planter, together with the retaining wall and raised ground level are within the root protection areas (RPA) of the TPO trees. Nevertheless, the appellant's arboricultural report indicated that the works have had little adverse effect on the health of the trees. In particular, the report suggested that the limited depth of excavations associated with the works are likely to only have adversely affected minor tree roots which would have been replaced in the following growing season, and; that the limited raising of the soil level between the retaining wall and the trees is unlikely to have affected water penetration to the roots. In October 2017, the structural and physiological condition of the TPO trees was noted as being similar to February 2015, prior to the works being undertaken. Although I appreciate that damage to trees can take some years to become evident, no obvious deterioration in the health of the trees was apparent when I visited the site.
 10. Therefore, whilst I fully understand the Council's concern that the works seem to have been carried out without proper tree protection and supervision, damaging tree roots, there is little substantive evidence to indicate that the works have unacceptably affected the current and future health and wellbeing of the TPO trees. Accordingly, I find that the works have not adversely

affected the visual contribution made to the surroundings by the TPO trees. Moreover, the works potentially benefit the trees by preventing future damage caused by occasional parking.

11. For the above reasons, the works have not caused unacceptable harm to the character and appearance of the area. Therefore, the works accord with Policy CS41 of the Bournemouth Local Plan Core Strategy, as they are well designed and of a high quality which respects the property and its surroundings in terms of character and appearance. The works also accord with Policy 4.25 of the Bournemouth District Wide Local Plan (LP) as sufficient land has been included for planting and landscaping. Furthermore, the works are therefore consistent with the revised National Planning Policy Framework (the Framework) at Section 12 as a well-designed place has been achieved.

Highway safety

12. The appellant confirmed that the hard surface is no longer intended to be used for vehicle parking. The picket fence physically prevents use of the hard surface for vehicle parking in any event. Consequently, there is no unacceptable harm to highway safety due to the works. As there is no direct access, parking or turning movements onto the distributor road, the works accord with LP Policy 8.1. In the absence of an unacceptable impact on highway safety the works are also consistent with paragraph 109 of the Framework.

Conclusion

13. The works have not caused unacceptable harm to the character and appearance of the area, they accord with the Development Plan and they are consistent with the Framework. Therefore, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Appeal B

14. It is unnecessary for me to consider whether the appeals on grounds (f) and (g) should succeed as the notice will be quashed in consequence of my decision to allow Appeal A on ground (a). I shall, therefore, take no further action on these grounds of appeal.

Appeal C

Main Issue

15. This appeal solely concerns landscaping works. Therefore, the main issue is the effect on the character and appearance of the area, including the effect on protected trees.

Reasons

16. As the works are substantially similar to Appeal A, the effect on the character and appearance of the area is also substantially similar. Moreover, given those findings the appellants do not have to provide justification for the works.

Conclusion

17. The works have not caused unacceptable harm to the character and appearance of the area, they accord with the Development Plan and are consistent with the Framework.

Conditions

18. I shall impose conditions preventing the landscaped area being used for the parking or storage of vehicles, in the interests of highway safety. On Appeal A, provided it is made clear that this is notwithstanding the description of development in the deemed application, such a condition will satisfy the tests for conditions set out in the Framework. Even if the picket fence around the hard surface were to be removed in future, it would be a relatively straightforward matter to detect a breach of the condition. Consequently, installing concrete bollards around the hard surface is unnecessary.
19. As the works have already been carried out there is no need to impose a condition specifying the approved drawings. The planting has already been carried out, it is established and is acceptable. As a result, conditions requiring the submission and implementation of a landscaping scheme to provide coverage of the hard surface would not satisfy the Framework tests. However, after seeking the views of both main parties I have imposed conditions requiring the replacement of any of the planting which dies or is removed or becomes seriously damaged or diseased within five years, in order to safeguard the character and appearance of the area.

Formal Decisions

20. Appeal A-it is directed that the enforcement notice is corrected by the deletion in its entirety of the requirement which begins "*Install concrete bollards, to stop the use of the land for parking of any vehicle...*" Subject to this correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the undertaking of an engineering operation to alter the level of the land, erection of a retaining wall and creation of a raised planting area and hard surfaced/parking area on land at Valcourt, 18 Branksome Wood Road, Bournemouth BH4 9JY referred to in the notice, subject to the conditions set out in the Schedule at the end of this Decision.
21. Appeal B-I take no further action in respect of this appeal.
22. Appeal C-the appeal is allowed and planning permission is granted for alterations to the ground levels to form new hard landscaping area with raised planter and picket fencing partially around the perimeter at Valcourt, 18 Branksome Wood Road, Bournemouth BH4 9JY in accordance with the terms of the application, Ref 7-2017-4701-R, dated 4 December 2017 subject to the conditions set out in the Schedule at the end of this Decision.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

Appeal A

- 1) Notwithstanding the description of development in the deemed planning application, the red hatched area on the plan attached to the enforcement notice shall at no time be used for the parking or storage of vehicles.
- 2) Any of the hedgerow planting, lawn areas and the planting in the central timber planter within the red hatched area on the plan attached to the enforcement notice which within a period of 5 years from the date of this decision die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Appeal C

1. The area of land to which this permission refers, more particularly coloured brown and green on drawing no 2958 and described thereon as an ornamental stone surface and grassed areas respectively, shall at no time be used for the parking or storage of vehicles.
2. Any of the hedgerow planting, lawn areas and the planting in the central timber planter, all shown on drawing no 2958, which within a period of 5 years from the date of this decision die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.