



Appeal Decision

Site visit made on 16 September 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/G1250/C/19/3220069

Land at 44 West Way, Bournemouth BH9 3ED

- 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 Azmec Toros against an enforcement notice issued by Bournemouth Borough Council.
- The enforcement notice was issued on 4 December 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, alterations and single storey extension to a dwellinghouse.
- The requirements of the notice are: Either dismantle the single storey extension in its entirety, remove all resultant materials from the land, and restore the building to its original size, appearance and material finish or carry out remedial works so that the development accords with that shown on the proposed elevational drawing and floor layout drawing reference J.39.23017-22A approved under planning reference:- 7-2018-13147B (a copy of which is attached) *[to the notice]*.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary of decision: The appeal is dismissed and the enforcement notice upheld with a correction as set out below in the Formal Decision.

Background

1. Planning permission was granted under reference 7-2018-13147-B for alterations and a single storey L-shaped extension to the appeal property.
2. A further application was submitted again described as for alterations and single storey extension (reference 7-2018-13147-C). This was refused by the Council due to harm to the character and appearance of the appeal property and area, and to the living conditions of neighbouring residents at No 42.
3. The development on the ground was not constructed in accordance with the approved plans and also differs from the second proposal refused by the Council. For the avoidance of doubt, I shall deal with the appeal on ground (a) on its merits and am not bound in any event by the Council's decision to refuse the second application.

The appeal on Ground (a) and the Deemed Planning Application

4. The appeal on ground (a) and the deemed planning application seek to demonstrate that planning permission should be granted for what is alleged in

the notice. I therefore proceed to assess the planning merits of the appeal development on this basis.

Main Issues

5. The main issues are the effect of the extension on the character and appearance of the appeal property and surrounding area, and on the living conditions of the occupants of 42 West Way, with particular regard to outlook.

Character and appearance

6. The appeal property is a detached house located in a corner position at the junction of Brockenhurst Road with West Way. It is one of a number of houses along this stretch of West Way which are of a similar design, with hipped roofs being a characterising feature.
7. Side extensions of properties in the immediate area are generally fairly modest in scale relative to the host property, with many sharing the hipped roof form of the main part of the house.
8. The approved L-shaped extension was designed with a hipped roof, save for the section nearest to 42 West Way which was intended to have a flat roof and to be stepped back from the remainder of the extension. The extension was built not in accordance with the approved plans in that it has an entirely flat roof and is not set back next to No 42.
9. By reason of its size and design, the extension appears as an awkward and discordant feature which unacceptably detracts from the character of this hipped roof house. The scale and box-shape of the extension also mean that it is clearly visible from and appears unacceptably discordant within both Brockenhurst Road and West Way.
10. That the approved extension would have had a partially flat roof does not alter that assessment. Equally, the granting of permission previously for a single storey rear extension with a flat roof is not comparable to the L-shaped extension as built, which is a more dominant presence than an extension projecting only from the rear elevation.
11. The appellant submits that reducing the extent of the flat roof overhang and demolishing the north east corner of the extension nearest to No 42 would overcome harm to the character and appearance of the host property and area.
12. These measures would very modestly improve the appearance of the extension as built. However, even with the overhang reduced, the extension would remain a large flat roofed, box-like structure. It would therefore still be out of character with the host property and a visually discordant presence in the street scene. As such, a condition requiring these measures would not overcome the harm identified.
13. Accordingly, I find that the extension is materially harmful to the character and appearance of the appeal property and surrounding area. It conflicts with Policy CS41 of the Bournemouth Local Plan: Core Strategy (2012) (CS) which seeks to ensure that development respects the site and its surroundings. It also does not respond to local character as expected by the National Planning Policy Framework (2019) (Framework).

Living conditions

14. The appeal property is positioned very close to the neighbouring house at No 42, which has been modestly extended to the rear. The appeal extension protrudes well above the height of the neighbouring fence and extends far beyond the new rear wall of No 42, very close to the common boundary. It therefore has an oppressive and enclosing effect on the outlook from the part of the rear garden nearest the house, commonly used for sitting out.
15. As outlined above, the appellant proposes to reduce the extent of the overhang and to demolish the north east corner of the extension nearest to No 42 in order to overcome the Council's concerns regarding the extension as built. Reducing the extent of overhang would not improve the outlook for neighbouring residents at No 42 of itself as the wall adjacent to the common boundary would remain.
16. Demolishing the part of the extension nearest to No 42 would potentially overcome concerns related to living conditions of the occupants of No 42. However, it would not overcome the harm identified related to the character and appearance of the appeal property and surrounding area.
17. It follows then that planning permission will be refused and, as it stands, the extension causes unacceptable harm to the living conditions of the occupants of No 42 with particular regard to outlook. In this way it conflicts with Policy CS41 of the CS which protects the amenities of neighbouring residents, and with similar policy contained in the Framework.

The appeal on ground (f)

18. The appeal on this ground seeks to show that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control identified or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. I have considered the appellant's proposals under ground (a) and found that they would not remedy the harm identified.
20. The purpose of the enforcement notice in this case is to remedy the breach. This is because this is what would be achieved by the requirements of the notice to either remove the extension or to bring it into line with the planning permission previously granted. The appellant has not proposed any lesser steps which would achieve that purpose.
21. No other lesser steps have been put forward by the appellant and requiring that the extension is removed or modified in accordance with the planning permission is not an excessive means of remedying the breach.
22. However, the notice lacks precision in that it requires only modification in accordance with the approved plans, whereas it should properly require modification to comply with the terms and conditions of the planning permission. I consider that I can correct the notice in this way without causing injustice to either the appellant or the Council.
23. The appeal on ground (f) therefore succeeds to this limited extent and I correct the notice as outlined in my formal decision below.

Conclusion

24. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction, and refuse to grant planning permission on the deemed application.

Formal decision

25. It is directed that the enforcement notice is corrected by deleting the text of paragraph 5 after the word "or" and substituting: "Carry out remedial works so that the extension is built in accordance with the terms (including the conditions) of the planning permission ref: 7-2018-13147-B".
26. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

V Bond
INSPECTOR