



Appeal Decision

Site visit made on 4 May 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

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

Decision date: 24 May 2021

Appeal Ref: APP/V1260/C/20/3264975

Whitley Court Hotel, West Cliff Gardens, Bournemouth BH2 5HL

- 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 Ms Wendy Lovett against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
 - The enforcement notice was issued on 1 December 2020
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of boundary fencing and gates along the side (north) boundary fronting West Cliff Road, fencing and gate at right angles to West Cliff Road between the northern boundary and the building, and surmounted fences along the rear (east) boundary.
 - The requirements of the notice are:
 - a) *Remove the fencing and gates along the West Cliff Road boundary forming the side North boundary approximate location of fence/gates marked in blue on the attached plan including all respective posts and cross bars, fixtures and fittings.*
 - b) *Remove the fencing and gate situated at right angles to West Cliff Road between the northern boundary and the building (approximate location of fence/gate marked in red on the attached plan) including all respective posts and cross bars, fixtures and fittings.*
 - c) *Remove the fencing and surmounted fencing forming the rear (eastern) boundary (approximate location of fence/gates marked in green on the attached plan) including all respective posts and cross bars, fixtures and fittings.*
 - d) *Remove all resultant materials from the land.*
 - The period for compliance with the requirements is 2 months.
 - The appeal 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.
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Decision

1. It is directed that the enforcement notice is varied by:

- By the deletion of the full stop at the end of requirements (a) and (b) and the addition of the words "or reduce the height of the fence/gate so that no part is higher than 1m above ground level".
- By the deletion of the full stop at the end of requirement (c) and the addition of the words "or reduce the height of the fence between the back of the footway and the boundary wall of Avon House parallel with the footway so that no part is higher than 1m above ground level and reduce the height of the fence behind the boundary wall of Avon House with Whitley Court Hotel so that no part is higher than 2m above ground level".

Subject to these variations, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177 of the 1990 Act as amended.

Appeal on ground (a) – that planning permission should be granted

Main Issues

2. The main issue is the effect of the development on the character and appearance of the Poole Hill and West Cliff Conservation Area.

Reasons

3. The appeal property comprises a 3-storey detached Victorian villa located on the corner of West Cliff Road with West Cliff Gardens. It lies within the southern part of the Poole Hill and West Cliff Conservation Area, characterised by hotel development. Prior to the erection of the fencing, the boundaries were marked by a low post and chain fence along most of the West Cliff Road frontage and by higher concrete-panel fencing towards the part of the boundary near Avon House.
4. The Council has produced a draft Appraisal and Management Plan for the West Cliff & Poole Hill Conservation Area on which it has carried out public consultation, although it has not been formally adopted. I therefore afford it modest weight. The appraisal denotes the appeal building, and its neighbours to the south, as positive buildings.
5. The hotel is finished in red brick at ground floor and basement level, whilst the upper floors are finished in render with exposed black-painted timbers. The roof is finished in tile. The main elevation faces West Cliff Gardens, and three-storey projecting bays on either side of the elevation are prominent and attractive features. Although there have been some unsympathetic alterations to the building, its design, size, and the use of architectural details which include dentils, windows headers, corbels and the pattern of exposed timbers, make a positive contribution to the significance of the conservation area. The rear elevation is visible from West Cliff Road, and this largely mirrors the design and appearance of the front elevation.
6. The elevation facing West Cliff Road is of lesser importance, but nevertheless is fairly imposing with two gables of dissimilar size and the side of one of the three storey bays being evident. This elevation possesses the greatest extent of exposed timber, and together with an ornamental plaque giving the date of AD 1882, it also has significance to the conservation area.
7. The fence subject of the enforcement notice runs along over two-thirds of the length of the boundary with West Cliff Road, extending from the boundary with Avon House, a 10/11 storey block of flats, which lies outside of the conservation area, extending as far as the entrance to the hotel building. There is a short return section of fencing parallel with West Cliff Gardens, running from the roadside section to the entrance of the hotel. A longer run of fencing runs along the rear boundary with Avon House.
8. The Council's appraisal explains that owing to the domination of hotel uses in the area, few original examples of boundary enclosures remain because frontages have been altered to allow parking directly off the road. This is true of the appeal premises, the front forecourt to which is wholly open. The appraisal notes that the remaining original enclosures include the white-painted balustrade to the seaward boundary of the Highcliff Hotel, and several larger buildings nearby have retained low brick walls with tall privet hedges grown above them. Not far from the appeal site, a few original cast iron decorative

railings survive, mainly in Durley Road. Where there are more modern enclosures they tend to be of variable quality, but mostly involve low walls, some with decorative concrete infills, and others with fencing.

9. The fencing subject of the enforcement notice is constructed of solid close-boarded vertical slats, with a pair of lower double gates set into part of the fence near the Avon House boundary, and a door set into the part nearest to the entrance of the hotel. The return section adjacent the hotel entrance also has a gate in it. The fence along the West Cliff Road frontage is painted grey, but the gates and door set in it are unpainted, as are both of the return sections.
10. The draft appraisal sets out a number of policies to guide future management of the conservation area. Policy 41 says that replacement boundary treatments should use a local material palette, and that modern materials such as timber panels, close-boarded timber, unpainted galvanised or non-ferrous metals, powder-coated metalwork, composite stone units and concrete copings are unlikely to be acceptable.
11. I accept that the purpose of a conservation area is not to preserve it in aspic, and I recognise that modern designs and materials can preserve or even enhance an area's character or appearance; this is recognised in paragraph 5.1 of the Council's appraisal. However, the fencing in this case is starkly out of keeping with traditional means of enclosure of nearby Victorian villas and lacks the detail or quality that contribute to the significance of the conservation area. Being on a corner position and abutting a main road and roundabout, the site is a prominent one, in full view of road users. The fencing is more akin to a construction site hoarding and its size, materials and design are at odds with the design quality of the host building and those in the surrounding area. The fencing creates a poor vista when travelling along West Cliff Road, and neither preserves nor enhances the character and appearance of the conservation area, and harms the wider street scene.
12. I have considered whether any parts of the fencing would be acceptable, but I find that the inappropriate use of materials in juxtaposition with the high-quality fabric of the host building results in significant harm. The fencing at the rear of the property is partly hidden by the boundary wall of Avon House, and, when in leaf, by the vegetation growing on it. However, the part of the fencing visible over the wall appears incongruous, and whilst such fencing may be wholly appropriate for many a rear garden, it is harmful in this setting.
13. In the terms of the National Planning Policy Framework, the harm caused by the fencing is "less than substantial". This does not mean that great weight should not be afforded to that harm; but it does mean that the harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In this case there are no obvious public benefits arising from the development; all the benefits identified by the appellant are private ones, and I shall refer to those below.
14. I therefore find on the main issue that the fencing fails to preserve the character and appearance of the conservation area, and it harms that of the wider street scene. It is contrary to Policies CS39 and CS41 of the Bournemouth Local Plan Core Strategy, which respectively deal with dedicated heritage assets and quality design. It also conflicts with Policy 4.4 of the Bournemouth District Wide Local Plan, which deals with conservation areas.

Neither Policy CS39 nor Policy 4.4 are wholly consistent with the Framework in that they do not include the need to balance public benefits, but as none arise here, this degree of conflict carries little weight. It also conflicts with the non-statutory policies of the draft appraisal and management plan.

Other matters

15. The appellant has indicated that the fencing is needed to provide both privacy and security. No specific explanation has been provided as to how these needs have arisen, but in any event, there are other means of providing both security and privacy which would be less harmful than the fencing in this case, which would potentially be acceptable to the Council.
16. I also acknowledge that there are permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 to erect fences up to 1m high in the case where it is adjacent to a public highway or 2m in any other case. The ability to implement these rights is a fallback position, but the permitted fences would be much lower than the fences erected here, especially along the West Cliff Road boundary, so that the fallback position would be materially different and would be significantly less harmful than the development carried out.
17. The requirement of the enforcement notice engages with the right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and the importance of preserving and enhancing the character and appearance of the area are matters of legitimate public interest.
18. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellant's rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
19. I therefore conclude that, for the reasons given above, the development conflicts with the development plan, and that planning permission should not be granted, and that the appeal on ground (a) fails.

Appeal on ground (f) – that the requirements exceed what is necessary to remedy the breach of planning control

20. The notice does no more than is necessary to remedy the breach. However, I have referred above to the existence of permitted development rights to construct lower fences. As this is a realistic fallback position, there seems to me to be little point in requiring the complete removal of the fence, only for fences of the permitted height to be erected immediately afterwards. I recognise that this fallback position may result in fencing that would also not be in keeping with the conservation area, but as such rights are provided in national legislation, and no Article 4 Direction has been imposed to remove them, then it would be appropriate to vary the notice to provide an option to reduce the height of the fencing to that permitted under the Order.
21. Accordingly, to this limited extent the appeal on ground (f) succeeds.

Appeal on ground (g) – that the period for compliance falls short of what is reasonably required

22. Two months is sufficient time to arrange for the removal or lowering of the fence. I accept that it would be unlikely to be sufficient to allow for the submission and consideration of a planning application for an alternative enclosure, and if approved, its subsequent implementation. However, I need to balance the public interest against the private considerations, and in view of the importance which is attached to the protection of designated heritage assets, I consider that the balance lies in favour of a speedy resolution of the matter. Accordingly the appeal on ground (g) fails.

Conclusion

23. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control having regard to permitted development rights and I shall therefore vary the notice to provide an alternative option. The appeal on ground (f) succeeds to that limited extent. The appeals on grounds (a) and (g) should not succeed. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

JP Roberts

INSPECTOR