
Appeal Decisions

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 4 August 2021

Appeal Ref: APP/V1260/C/20/3265569 & 3265570

The Barn, 41A Burley Road, Winkton, Christchurch BH23 7AJ

- 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 and Mrs Kendall against an enforcement notice issued by Bournemouth, Christchurch and Poole Council.
 - The enforcement notice was issued on 26 November 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey ground floor addition in the approximate position hatched black on the attached plan.
 - The requirements of the notice are: a) Demolish the single storey side extension including all footings/foundations and disconnect all main services in the area hatched black on the attached plan; b) Following compliance with a) above, make good the East elevation by bricking up any exposed openings on this elevation, with the exception of the existing doorway opening. Use materials which match those of the existing building, including the final application of timber cladding. Install a side entrance door within the doorway opening; c) Remove all resulting materials from the land affected following compliance with a) and b) above.
 - The period for compliance with the requirements is: Six months after the Notice takes effect.
 - The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the Enforcement Notice (EN) is upheld.

Main Issue

2. Under s191(2)(a) of the 1990 Act, operations are lawful at any time if the time for enforcement action has expired. The relevant time limit in the case of operational development, such as is alleged to have occurred in this appeal, is set out under s171B(1) of the 1990 Act. This states that "where there has been a breach of planning control consisting in the carrying out without planning permission of building.....operations,no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed".
3. The burden to make out a case successfully in legal grounds of appeal, such as under ground (d), rests with the appellant. In view of this and what is set out above, the appellants need to show, on the balance of probability, that the single storey ground floor addition attacked in the EN was substantially

completed for four years prior to the EN being issued. The EN was issued on 26 November 2020 and this is the date when the Council took enforcement action. The material date is therefore 25 November 2016.

Reasons

4. In submitted statutory declarations and their appeal statement, the appellants confirm that works on the ground floor addition commenced on 7 November 2016. The foundations and the floor slab were concreted on 18 November 2016. The appellants builder confirms in their statutory declaration that they "substantially completed the walls and the roof of the new addition between the 18th November to the 23rd December 2016". The extent of the works completed by 23 December 2016 tallies with the appellants' statement.
5. Given that it is very likely only the base of the extension was in place on 18 November 2016 and that works to complete the walls and the roof then progressed through the rest of November 2016 until 23 December 2016, the extension cannot, by the appellants' own admissions, have been substantially completed until after the material date. The appellants have suggested how the build could have progressed quickly by estimating daily rates of bricklaying (walls built in 2/3 days) and the time that could be taken to then put a roof and cladding on (5 days). However, even if this was possible, that clearly did not happen because the builder has already declared that the works to substantially complete the walls and the roof went from 18 November 2016 to 23 December 2016.
6. The case for the appellants is not helped by answers they gave to a Planning Contravention Notice (PCN) issued by the Council dated 3 May 2019 when it was investigating potential breaches of planning control at the appeal property, including the single storey addition attacked in the EN, then referred to and shown as extension 'B'. In answer to question 15 "When did the works first commence to construct the side extension? Please provide the month and year", the appellants stated "September 2016". In reply to question 16 "When were the works substantially completed to allow the side extension to become habitable occupation" the answer given was "February 2017".
7. Clearly the statutory declaration and the PCN dates for commencing construction do not match. Nor do the completion dates, although I note that being suitable for habitable occupation may not mean the same as "substantially completed" for the purposes of the 1990 Act. Nonetheless, the conflict in dates further undermines the case for the appellants. Further date conflicts arise due to information given on the application form for retrospective planning permission for developments that included the appeal extension. On that form it is declared that the work was completed on 9 January 2017, which is yet a further different completion date.
8. The appellants have queried why the Council has taken the view that certain other elements of the development applied for retrospectively in application Ref: 8/19/0906/FUL, which included the single storey addition subject of the EN, were "timed out" and that being the case, why that situation does not apply to the appeal extension. However, it is not for me to answer that question given that the burden to make out the case rests with the appellants. Moreover, the case made by the appellants shows that the test of substantial completion by the material date was missed anyway.

9. The appellants also suggest that the Council does not have “*definitive photographic or officer’s evidence that clearly supports the Authority’s view that the extension was not substantially built (floors, walls & roof) by the date that the planning enforcement notice was received on the 2nd December which then takes effect on the 31st December 2020*”. However, this is a misunderstanding about the key date which is the material date referred to above – that being 25 November 2016.
10. The appellants further suggest that a Council photograph dated 17 December 2016 (but it may have been posted on the front fence of the appeal property the appellants claim in early December 2016), appears to show a builders van with a blue tarpaulin to an approved ground floor addition (Ref: 8/16/1054/HOU granted by the Council on 2 February 2017 for “a ground floor garage addition providing a new lobby front entrance to the existing dwelling referred to above) and as such, it does not show that the kitchen part of the single storey addition was not substantially built at the same time.
11. However, the photograph at best shows a very small part of the side of a white vehicle with a sliver of blue tarpaulin above the vehicle’s roof. So scant is the detail shown it does not conclusively show anything of any substance in aid of the appeal. Moreover, early December does not fit with when the builder says he was still working on the extension up until 23 December 2016, and even if it did show that the addition attacked in the EN was there in early December 2016, that is not by the material date.
12. The appellants also claim that they have built the approved ground floor structure within the footprint and dimensions of the approved scheme. Consequently, it is argued that the part at risk of the requirements of the EN is the kitchen at the back of what was approved. That, they say, is immune from enforcement action because it has been there for more than four years.
13. However, the appellants accept that the permitted garage is a bedroom and bathroom, and the approved flat roof has been changed to a pitched roof. Moreover, the statutory declarations from both appellants confirm that they employed a builder to construct a ground floor addition containing a new kitchen and master bedroom. The builder confirms the same. Given what has been declared, the very likely scenario is that the whole of the side addition (bedroom, bathroom and kitchen) was erected as one operation. This, along with the material differences from what was approved, mean that it is the whole extension that was built without planning permission and in my view no part of it is covered by the earlier planning permission. Accordingly, none of the extension is immune from enforcement action given my reasoning above.
14. Taken in the overall round, the appellants have painted a confused picture over when the work on the single storey addition was commenced and substantially completed. Furthermore, the various dates given for completion in statements, statutory declarations, a PCN and on a planning application form all come after the material date. Having had regard to all other matters raised, I conclude that the appellants have not discharged the burden upon them to show, on the balance of probability, that as a matter of fact and degree the single storey ground floor addition attacked in the EN was substantially completed for four years prior to the EN being issued. Consequently, at the date when the EN was issued, enforcement action could still be taken in respect of the development carried out. Therefore, the ground (d) appeal must fail.

15. I shall dismiss the appeals and uphold the EN.

Gareth Symons

INSPECTOR