The Planning Inspectorate

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 Refs: APP/V1260/C/20/3265342 & 3265343
41 Burley Road, Winkton, Christchurch, BH23 7AJ (currently known as 41 & 41B Burley Road)

- 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 & Mrs Kendall 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, on the land edged red, in the approximate hatched blue, the change of use of an extension to 41 Burley Road, resulting in a new dwelling and the erection of a single storey side extension serving as an entrance lobby/porch, and subdivision of the land edged red.
- The requirements of the notice are: a) Cease the use of the extension situated in the approximate position hatched blue as residential accommodation independent to no. 41 Burley Road; b) Convert the current development situated in the approximate position hatched blue so that it accords with the internal layout, in terms of all openings (reinstating where required all doorways and windows) and functionally with No. 41 Burley Road, (extract attached at Appendix A and highlighted yellow). This includes the requirement to remove the internal staircase from the area between the ground and first floors, and the removal of the fully fitted kitchen, disconnecting and removing all associated white goods and kitchen appliances; c) Demolish the single storey side extension (serving as a lobby/porch) situated in the approximate position marked with an 'X' including all footings/foundations; d) Remove the means of enclosure which currently subdivides No 41 Burley Road, facilitating the unauthorised dwelling; e) Remove all resulting materials from the land affected following compliance with a), b) c) and d) above.
- The period for compliance with the requirements is 9 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision

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

The ground (d) appeal

2. The appellants accept that the entrance lobby/porch element of the alleged breach of planning control was only erected in 2018 and as such is not contained within the 'four year rule' arguments relevant to the main part of their appeals in respect of the dwellinghouse. This part of the development is

they claim 'permitted development' which is an argument that I will consider under the ground (c) appeal below.

3. Under s191(2)(a) of the 1990 Act, any existing use of buildings or other land is lawful at any time if the time for enforcement action has expired. The relevant time limit under s171B(2) of the 1990 Act states that in the case of breaches of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Against this background, the appellants must show that, on the balance of probability, the change of use of the extension into a new dwelling occurred at least four years prior to the EN being issued, which is by 30 November 2016, hereinafter referred to as the material date, and the use should have continued substantially uninterrupted since.

4. The Statutory Declaration (SD) submitted by Mrs Kendall states that a general builder was employed to subdivide the existing 4-bed house into 2 x 2-bed houses, and he commenced work on 5 July 2016 while Mrs Kendall and her husband were away on long-term holiday until mid-September 2016. Although the SD goes on to confirm that the breach of planning control is in excess of four years and that enforcement action is not applicable, the SD does not give a date when the physical works to enable the change of use to occur were completed, or when the use as a single dwellinghouse started. This SD is of very limited assistance to the appellants' case, and I attach it little weight.

5. The SD from Mr Kendall adds a further layer by confirming that the works were completed in September 2016 upon Mr and Mrs Kendall's return from holiday. However, apart from referring to the builder being employed to sub-divide the existing house, there is no detail about the extent of the works carried out and the SD does not set out when the use of the appeal building as a dwellinghouse commenced. This SD is also of very limited use in making out the case for the appellants. It has little weight.

6. The SD from the appellants' builder states that the appeal property has been occupied by the owners and tenants following the conversion and subdivision of the 4-bed house more than four years ago meaning four years and four months up to the date of the EN. However, four years and four months does not tally with either the period from commencing the works to the date when enforcement action was taken (1 December 2016), nor does it tally with the period from when it is stated that works were completed to the 1 December 2016 or even to when the EN takes effect on 31 December 2016. The confusing reference to '4 years 4 months' undermines this SD evidence meaning that it has only limited weight.

7. Furthermore, the appellants have twice applied to the Council for retrospective planning permission. Under Council reference 8/19/0283, on a planning application form received by the Council on 30 January 2019 for *"The sub division of a large existing 4Bed 8Person House into Two 2Bed 4Person dwellings"*, in answer to the question *"Has the work or change of use already started? If yes, please state the date when the work or change of use started (date must be preapplication submission)"* the date given was 20 June 2016. This date clearly does not correspond with the date referred to in the SDs that work started in July 2016. Moreover, in answer to the same question in another subsequent planning application (Ref: 8/19/0686/FUL received by the

Council on the 12 March 2019) for the same scheme, the date given was 27 June 2016. Albeit only 7 days difference between the answers given, the discrepancy is not helpful to the appellant's case and either way, neither June 2016 date matches the start date for works declared in all the SDs which was 5 July 2016.

8. Further date discrepancies arise when on both planning applications it was stated that "work or change of use" was completed 9 January 2017 which conflicts with SD date given by the builder of September 2016 for when the refurbishment forming 41B was substantially completed. In making both planning applications, Mr Kendall declared that to the best of his knowledge, the facts stated were true and accurate.

9. In addition to the above, in November 2017 the appellants were in contact with the Council's Council Tax section seeking separate Council Tax to be paid on each new dwelling following the sub-division of the former single house. On an on-line form it was stated *"Hello I have just divided my existing dwelling into two separate houses and I would like to arrange for separate council tax to be applied to each dwelling how do I go about this?"*. To my mind referring in November 2017 to *"I have* ***just*** *divided my existing dwelling into two separate houses"* (my emphasis) strongly implies that the creation of 41B could have occurred in the latter half of 2017 rather than in the second half of 2016. This being the case, this was clearly past the material date. The Council Tax record for 41B also shows that the tax band 'A' had effect from 1 December 2017. Council Tax records are not in themselves necessarily a conclusive indicator of when a use occurred in planning terms, but in this case the information casts further doubt on when the change of use to create 41B took place.

10. I have had regard to the claim that the first tenants of the property were in receipt of Council Tax benefits and the regularisation of the Council Tax situation did not occur until December 2017 with the help of the appellants. Nevertheless, that does not persuade me to find any differently to my earlier findings, given that it was the appellants who made the statement in the on-line form referred to above.

11. Turning to other evidence, I note an email from an energy services company which says that a meter was installed at plot 1, 41 Burley Road on 22 August 2016. However, in the appellants evidence there is nothing to identify with any certainty which property might be 'plot 1' bearing in mind that I am considering the property known as and referred to by the appellants as 41B. There are also four dwellings shown on the plans submitted with the first planning application referred to above. I attach the energy supplier email very little weight. A water meter was installed at 41B on 18 September 2016 as confirmed in an email from a water supplier. However, this evidence does not in itself show that the use as a dwellinghouse commenced before the material date. It has limited benefit to the case for the appellants. An invoice showing work carried out for a new pumped drainage system also does not demonstrate that the dwelling was then occupied around this date.

12. The first tenancy agreement began 21 January 2017 which is after the material date. This would appear to indicate that the use of the dwellinghouse occurred too late when applying the four years' time limit and there is nothing to substantively show that the use as a dwelling occurred before this date. Moreover, I note that the tenancy was for 12 months which would take it up to

21 January 2018. The second tenancy started in May 2018. Without explaining whether the first tenants extended their stay beyond what had been signed for, there is nothing to explain what may have been a significant gap when the residential use was not occurring. This is not a turning point of my findings given the more significant discrepancies referred to above. Nevertheless, it adds to my concern that the case for the appellants has not been made out to the required standard. The collection of waste and recycling materials by the Council does not show that the use was occurring over the requisite timeframe.

13. The appellants evidence is not clear, precise and unambiguous. Consequently, they have fallen short of the burden upon them to show, as a matter of fact and degree, that on the balance of probability the use of property as a single dwellinghouse occurred for at least four years prior to the material date and it has been used as such substantially uninterrupted since. Therefore, it was not too late for enforcement action to be taken and so the ground (d) appeal fails.

The ground (c) appeal

14. Article 3(5) of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) provides that the planning permission granted by the GPDO does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful. The purpose of this provision is to prevent unlawful development from acquiring permitted development rights to extend an unlawful dwellinghouse, for example.

15. Given what I have found above, the use of the property as a dwellignhouse is unlawful. As such, the entrance lobby/porch erected to 41B cannot be permitted development. Therefore, notwithstanding all the evidence from both sides about whether the lobby falls within the conditions and limitations of the GPDO, the development carried out does not have planning permission and is thus in breach of planning control. The ground (c) appeal must also fail.

Conclusion

16. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Gareth Symons

INSPECTOR