



Appeal Decision

Site visit made on 3 August 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 26 August 2021

Appeal Ref: APP/B1740/C/19/3221343

28 Brookside Road, Bransgore, Christchurch BH23 8AW

- 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 Mrs Helen Jenkins against an enforcement notice issued by New Forest District Council.
 - The enforcement notice was issued on 14 January 2019.
 - The breach of planning control as alleged in the notice is: The erection of a fence, including a gate, erected adjacent to the highway and in excess of 1 metre in height, in the approximate position shown by a black line and marked between points A to B, B to C, C to D and D to E on the attached plan. Siting of two outbuildings and associated hard standing areas including change of use from open amenity land to domestic garden in the approximate position hatched black on the plan attached to the Notice.
 - The requirements of the notice are: i) Remove the fence including all posts, supports and fixings between points A and B, B and C, C and D, and D and E as marked with a black line on the attached plan; ii) Remove the two outbuildings and associated hard standings as shown within the area hatched on the attached plan; iii) Following compliance with (i) and (ii) above remove all resultant debris from the land; iv) Infill all holes and level the land with topsoil and reseed these areas with grass seed where the cement slabs are removed as required by step (ii).
 - The period for compliance with the requirements is: Three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is hereby directed that the Enforcement Notice (EN) is corrected by deleting:
 - "erected adjacent to the highway and in excess of 1 metre in height," from section 3;
 - the second sentence from section (3);
 - the first sentence from section 4 and replacing that with "It appears to the Council that the above breaches of planning control have occurred within the last four and ten years;
 - requirement (ii) from section (5);
 - requirement (iii) and replacing that with a new requirement (ii) to read: "Following compliance with (i) above remove all resultant debris from the land";
 - requirement (iv).

2. Subject to these corrections, 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 erection of a fence, including a gate, in the approximate position shown by a black line and marked between points A to B, B to C, C to D and D to E as shown on the plan attached to the notice and subject to the following condition:

A natural hedge no lower than 1.8m high shall be maintained along the side boundary of 28 Brookside Road in the approximate position marked B to C and C to D on the plan attached to this decision (taken from the plan attached to the Enforcement Notice), apart from where there is a pedestrian gate from the driveway into the garden of the house.

The Notice

3. The EN alleges that a change of use has occurred. The relevant time limit for where there has been a breach of planning control consisting of a material change of use of land is 10 years beginning with the date of the breach. The EN, however, only refers to the alleged breaches of planning control occurring within the last four years. I acknowledge that the Council has not raised any objection to the alleged change of use of the land and there is no associated requirement for this to cease. However, the EN needs correcting to refer to both time limits. Given the grounds of appeal pleaded and the timescale within which it is alleged that the change of use occurred, I can make this correction without causing injustice to either side.
4. Regarding the fence and gate part of the allegation, the actual act of development is the erection of a fence and gate. It is not necessary to include in the description of the development reasoning why the Council considers the fence/gate needs planning permission such as "erected adjacent to the highway and in excess of 1 metre in height". The allegation can thus be corrected accordingly.
5. I am aware of the disputes over the accuracy of the EN plan and the positions shown for the outbuildings. However, the EN is clear enough in my view to adequately establish and identify the alleged breaches of planning control. Furthermore, given that my subsequent findings have led me to quash the EN, these matters do not require any further detailed consideration.

Procedural Matters

6. Since the appeal was submitted the Development Plan position has changed with the adoption of the New Forest District Local Plan 2016-2036 Part 1: Planning Strategy (LP). Policy CS2 from the Core Strategy has been replaced and former policies 13 and 14 from the emerging LP are now policies ENV3: Design Quality and Local Distinctiveness and ENV4: Landscape Character and Quality. The former emerging LP policies were referred to by the Council in its appeal statement and so, despite the change in development plan status, the cases of either side have not been affected.
7. I have had regard to the comments made on the revised National Planning Policy Framework (NPPF) published recently. With the comments from the appellant, further information was submitted that in my opinion was new evidence which I have not had regard to in reaching my decision.

The ground (c) appeal

8. This ground of appeal is about finding whether the matters stated in the EN constitute a breach of planning control. In this case, the EN alleges a change of use from open amenity land to domestic garden, and operational development involving the erection of two outbuildings with associated hardstandings, and a fence with a gate. The first step is to establish whether there has been development and then whether planning permission has been granted for that development. As part of addressing whether there has been a change of use, I will also determine whether the land is part of the curtilage to the appeal dwelling, as that is related to the planning permission granted by Schedule 1, Part 2, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) to erect buildings incidental to the enjoyment of the dwellinghouse.
9. The Council has alleged a change of use from open amenity land to domestic garden. The original layout of the estate may have left the land not enclosed by the former side boundary wall to the house. In that sense it was open because it was outside of the wall. However, there is no evidence that its use was as formal or designated amenity space, or that there is any planning condition on the original permission for the estate requiring that it must be kept for such a purpose. The land is owned by the appellant, is part of their overall property and is not part of the highway, unlike other grass verges on the other side of the pavement next to the road. Being outside the former wall did not mean that the land was in any other use than as side garden to the house. It was and still is part of the same residential planning unit. Consequently, as a matter of fact and degree, there has been no material change of use of the land hatched on the plan attached to the EN and thus no breach of planning control.
10. Despite its position at the side of the house, the land attacked in the EN is not associated with any other property. It appears that it has always been owned by the occupiers of No 28 Brookside Road and it has been used for no other purpose than as domestically maintained garden land. It was not originally enclosed by a boundary fence, but physical enclosure is not necessary to establish whether land is curtilage to a building. It has though been part and parcel of the land occupied, used, and defined as the plot at No 28 to the west of the highway as delineated by the red line on the EN plan. To my mind, as a matter of fact and degree, the evidence clearly points to the land being curtilage to No 28 and it has always been used for purposes incidental to the use of the dwelling.
11. As referred to above, the GPDO grants planning permission for the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is no other dispute between the appeal parties that the two outbuildings would not be 'permitted development' other than the matter of whether the land is within the curtilage of the dwellinghouse. Given my finding on this matter, the buildings are operational development that have planning permission. Therefore, in respect of the outbuildings and their associated hardstandings, there has been no breach of planning control.
12. Turning to the fence, including the gate, this is a building operation that requires planning permission. The GPDO also grants planning permission

under Schedule 2, Part 2, Class A for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. This planning permission is though subject to conditions and limitations, the key one of which relevant to this appeal is that the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed more than 1 metre above ground level.

13. Albeit the gate is sited on a return section of fence next to the appeal property's driveway, the fence as one means of enclosure is situated at the back edge of the pavement which comprises part of the highway used by vehicular traffic. It is therefore adjacent to the highway and because it is higher than 1m, it contravenes this limitation. Consequently, in respect of the fence and gate, there has been a breach of planning control.
14. The consequences of the above findings mean there is partial success under the ground (c) appeal. Therefore, it is also necessary to correct the EN by deleting the second sentence from the alleged breach of planning control which relates to the change of use of the land and the siting of the two outbuildings with their associated hardstandings. As part of those corrections, it is subsequently necessary to delete and amend the requirements of the EN accordingly. The effect of these actions is that the alleged breach of planning control is narrowed down to the fence and gate which I shall consider the planning merits of in the ground (a) appeal.

The ground (a) appeal

15. In view of the above, the main issue is the effect of the fence and gate on the character and appearance of the area.
16. In May 2018 an appeal (Ref: APP/B1740/W/17/3186932) was dismissed which, as part of the development considered by the previous Inspector, included the fence the subject of this appeal. He identified harm to the character and appearance of the area due to the position of the fence making it "particularly noticeable and discordant" and its "enclosure of open grassed areas" having a further erosive and detrimental impact.
17. The first Inspector visited in March 2018, which appears to have been about 10 months after the fence started to be erected. He took account of the landscaping that the appellant had planted along the perimeter of the fence but found that overall, it failed to mitigate its intrusive nature. Given the short timescale between the fence being erected and the planting taking place, and then his visit, the privet plants must have had a very modest screening effect. I note the subsequent comments of the Council's Landscape Team made in August 2018 which expressed reservations about the privet plants not being able to grow dense enough to diminish the visual impact of the fence. Limited space for the plants to grow and root successfully were cited as some of the factors that could inhibit growth towards establishing a suitable hedge.
18. In March 2020 the Council's Environmental Design Team revisited the appeal site and took a photograph. This shows the privet plants then had variable heights and density with the fence still being visible particularly on the upper half/third. In contrast to that appearance, I saw at my site visit that the privet plants now have an established appearance with, despite the relatively narrow width of about 30cms, a dense self-supporting foliage that very effectively

obscures views of the fence behind. Visually, from the road, the hedge is now the primary boundary enclosure. The hedge and the fence wrap around the corner alongside the driveway to No 28. It is only possible to see the tops of the roofs of the two outbuildings and even these do not look out of place on a residential estate characterised by various outbuildings and extensions.

19. Despite the reservations expressed by the Council's environment/landscape officers about the narrow strip available for planting, a robust hedge has been established that in my view mitigates the harm that was caused by the appearance of the fence. Moreover, there are numerous hedges and vegetation along the road, including on other corner plots, meaning that the new boundary does not look out of place.
20. I acknowledge that nearly 3 and a half years have elapsed between the first Inspector's site visit and mine, and in that time the hedge has not always been that established. Nevertheless, viewing the conditions as they are now, this is a significant and material change in circumstances from the last Inspector's findings. In this context, it would be reasonable, also taking account of the evidence from both sides about the hedge, to impose a planning condition requiring that a hedge no lower than 1.8m high should be maintained along this boundary. The return section of fence at the front of the house is shorter and other front garden planting means it is less noticeable than the main run of fence. The condition does not therefore need to cover this part of the fence.
21. I accept that by pushing out the side boundary, this has enclosed land that was formerly open to view. However, the appellants have exercised permitted development rights to erect buildings on some of this space which has diminished the openness at the side of the house anyway. This was not a feature of the previous Inspector's findings in the s78 appeal and is a further material consideration I can now take account of in this s174 appeal. The relatively marginal loss of openness in the context of the spatial layout of the wider estate causes no material harm to the overall openness of the surroundings. Furthermore, the Council's main concern regarding the outbuildings appears to be that if the fence was removed, they would be unduly prominent in views from the road. However, I have found the fence with its associated screening acceptable and, as referred to above, the buildings are hardly visible.
22. Against this background, whilst being fully aware of the need for consistent decision making, I consider that the material changes in circumstances since the last appeal mean that I can depart from the other Inspector's conclusions and find differently. I am also required to base my decision based on the merits of the evidence in this enforcement appeal. The erection of the fence and the gate have not harmed the character and appearance of the area. As such, the development complies with the design and landscape character aims of policies ENV3 and ENV4 from the LP. In my view, the scheme also accords with the aims of the revised NPPF as they relate to creating high quality and beautiful spaces.
23. The Council has suggested that if the appeal was allowed, I should impose a condition removing permitted development rights for the erection of outbuildings and means of enclosure. However, there are no exceptional circumstances to justify such a restriction, particularly given the circumstances and findings outlined above.

Conclusion

24. For the reasons given, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The appeal on ground (f) does not therefore fall to be considered.

Gareth Symons

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by Gareth Symons BSc(Hons) DipTP MRTPI

Land at: 28 Brookside Road, Bransgore, Christchurch BH23 8AW

Reference: APP/B1740/C/19/3221343

Scale: Do not scale.

