



Appeal Decision

Site visit made on 25 July 2022

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th September 2022

Appeal Ref: APP/V1260/C/22/3295356

Land at 21 Charminster Road, Bournemouth

- 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 E Yigitoglu against an enforcement notice issued by Bournemouth, Christchurch and Poole Council.
 - The enforcement notice, numbered ps/sab/c/2-2/0385, was issued on 24 February 2022
 - The breach of planning control as alleged in the notice is the enclosure of the forecourt to the front of the property by the erection of dwarf walls window/glazed panels and timber insert to the side elevations of the premises, the installation of a roller shutter door, and fixed shelving.
 - The requirements of the notice are:
 - a) The removal of the roller shutter, and the guide rails from the front of the property.
 - b) The removal of the dwarf walls, the glazing panels and wooden panel between the front of the building and existing metal canopy posts at between existing ground level and the underside of the existing canopy.
 - c) Removal of the fixed shelving units from the forecourt at the front of the property.
 - d) The repair of any damage to the front of the building, the canopy posts and the canopy as a result of compliance with A to C inclusive above; and
 - e) the removal of all resultant materials from the land as a result of compliance with a), b), C) and d) above.
 - The period for compliance with the requirements is 3 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 section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

2. The Council failed to provide a statement in time to support their reasons for issuing the notice. However, the notice confirms that the development is considered to be contrary to saved policy CS41 of the adopted Bournemouth Local Plan: Core Strategy Bournemouth Borough Council (2012) (CS) and policy 4.21 of the Bournemouth District Wide Local Plan (2002) (LP). These were attached at Appendix 1 to the notice. The notice also refers to the 'Shop fronts Guidelines', although I have not been provided with a copy of this. The appeal will therefore be considered in the light of the evidence before me.

Main Issue

3. From the notice and submitted policies, I consider that the main issue is the effect of the development on the character and appearance of the building and the area.

Reasons

4. Policy 4.21 of the (LP) relates to the preservation and enhancement of historic or traditional shop fronts. However, I have no evidence from the Council to assist me to assess the original historic value of the building, or the design and appearance of the site, prior to these works being carried out.
5. From my visit, the site is located in a busy, fairly traditional shopping street, where there are a range of small shops, bars, restaurants and cafes. To this side of the street, many of the properties are set back from the pedestrian footpath, providing small areas of forecourt. Many have enclosed their forecourts with a variety of low fencing and railings, and are used to provide customer seating.
6. I acknowledge that during opening hours, the general layout of the appeal site is not dissimilar to those nearby. However, at paragraph E of the Notice Appeal Form there is reference to an amendment to a previously existing shutter dating back to 1997, although no details of this are provided. At paragraph G, the appellant goes on to confirm that this 'security grill' has been moved towards the pavement, to enclose the area and prevent rough sleepers and disturbance close to the shop front.
7. The security grill/shutter, dwarf walls, side panels and display shelving have therefore formalised the use of the forecourt, which is used for the display of fresh fruit and vegetable produce when the shop is open. This area can then be secured from the street by closing the shutter outside opening hours.
8. I acknowledge that the shutter would only be used when the shop is closed, although times may vary. I have not been provided with copies of any letters or details from the police or Crime Prevention Officer. Nonetheless, I have had regard to the advice given to the appellant by local police in support of the repositioning of the roller shutter. I accept that full enclosure of the forecourt may increase security and discourage overnight sleeping and antisocial behaviour. I also note that this is also a matter raised in support of the appeal by a neighbour. Nonetheless, when closed, the development introduces an incongruous and highly visible solid structure into the street scene, that jars with the more traditional premises, where the forecourts generally remain open to views from the street.
9. Overall, I find that the design and siting of the development as a whole, fails to respect or make a positive contribution to the appearance of the site and its surroundings. It is therefore contrary to Policy 4.21 of the (LP) and CS41 of the (CS). These policies seek to ensure that development is of high quality that respects the appearance and character of the site and its surroundings and conserves and improves townscapes.

Ground (f)

10. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an

enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the roller shutter, dwarf walls glazed, and wooden panels are removed, and certain steps are taken to restore the Land. I therefore consider that the purpose of the notice is to remedy the breach of planning control.

11. In essence, the appellant's case is that additional time should have been given by the Council to discuss an acceptable scheme. Whilst I acknowledge the appellant's frustration, it is clear that there were a number of reasons why these discussions may have been delayed, and in any case these concerns fall outside the scope of this appeal.
12. Ground (f) provides some scope for a solution short of a complete remedy. However, any substituted scheme must be precisely defined. The appellant has not advanced details of a scheme that adequately demonstrates how any other lesser steps would fulfil the purpose of the notice. I therefore have no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision to allow part, or parts, of the development to remain.
13. Accordingly, on the evidence I have before me, I find that the remedial nature of the notice requires full compliance, through the removal of the roller shutter guide rails and housing, dwarf walls, glazing panels and wooden panel and in this regard the requirements are not excessive.

Other matters

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR