



Appeal Decisions

Site visit made on 3 October 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Appeal A: APP/V1260/C/22/3296296

Appeal B: APP/V1260/C/22/3296297

The land and premises to the rear of 140-142 Lake Road, Poole BH15 4LW

- 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 Aleck Tidmarsh of Barnstaple Boat Co Ltd (Appeal A) and Mrs Christine McCarthy (Appeal B) against an enforcement notice issued by Bournemouth, Christchurch and Poole Council.
 - The enforcement notice was issued on 11 March 2022.
 - The breach of planning control as alleged in the notice is: Unauthorised development consisting of the erection of a building without planning permission, which is a significant departure from an approved scheme for a single storey garage block of three (3) garages, subject to conditions, granted on the 13 April 2018, under planning permission reference: APP/18/00138/F.
 - The requirements of the notice are: Either: Carry out remedial works so that the building is constructed in strict accordance with the terms (including all conditions) of the planning permission APP/18/00138/F granted on the 13 April 2018 and as shown on the approved plan listed. Or: a) Cease all further development on the site on the land affected. b) Demolish the existing structure on the land affected. c) Ensure that all the resulting materials from the compliance with a) and b) above are removed from the land affected.
 - The period for compliance with the requirements is 4 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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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Summary of Decisions

1. The appeals are dismissed and the notice upheld subject to corrections.

Preliminary Matter

2. In their statements, the appellants make passing reference to most grounds of appeal, but only plead on the appeal form those grounds I have cited in the banner heading above. Given further evidence is not advanced pursuant to other grounds of appeal, and the Inspectorate's letter¹ confirmed the appeal grounds taken forwards, I have not considered other grounds further. Consequently, injustice to the parties does not arise.

¹ Dated 23 May 2022

The Enforcement Notice

3. The notice requires the cessation of all further development on the site. However, the notice is not a stop notice, and it is plainly wrong for such a requirement to have been made. Injustice to the parties however does not arise from correcting the notice to omit reference to this requirement.

Application for Costs

4. An application for costs was made by Mr Aleck Tidmarsh of Barnstaple Boat Co Ltd and Mrs Christine McCarthy against Bournemouth, Christchurch and Poole Council. This application is the subject of a separate Decision.

The ground (b) and (c) appeals

5. For the ground (b) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control.
6. Planning permission was granted² for the erection of three garages in April 2018. The plans before me show an approved building with a dual-pitched roof.
7. The Council has enforced against the erection of a building without planning permission. The appellants consider they have constructed the approved building but concede that the finished roof construction has a flat roof element, albeit they contend the pitch of the roof is the same as that approved. Moreover, I could see during my site visit that the roof then comprises four rooflights as well as a change to the eaves with a box gutter along the elevation facing the properties accessed from Lake Road. This has therefore all occurred as a matter of fact.
8. I appreciate that a drawing of the altered roof design may have been submitted for Building Control approval. However, even if that drawing were approved, that would have only been approved in relation to building control matters. It is therefore not a form of planning permission.
9. As a matter of fact and degree the building as constructed, including a large flat roof instead of a dual-pitched roof, as well as inclusion of a box gutter and four roof lights, results in a significant departure from the design of building originally approved for planning purposes. As a consequence, the building as a whole is materially different from that granted planning permission in April 2018. Furthermore, the planning permission contained two conditions with the objective of ensuring the development only be carried out in accordance with the approved plans and to remove permitted development rights for additional windows. If the appellants disagreed with those conditions, I then have no evidence that these were the subject of a variation or an appeal.
10. I recognise the roof lights and eaves alterations made it easier to construct the building. However, given planning permission had been given for plans showing a building of specific design, as is ordinarily the case, a departure from this requires a form of planning approval. There is then no evidence before me of

² Council Ref APP/18/00138/F

any form of planning approval for the building the subject of the enforcement notice.

11. Accordingly, the appellants have not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact, or that there has not been a breach of planning control.
12. The appeals on ground (b) and (c) therefore fail.

The ground (a) appeal

Main Issue

13. The main issue is the effect of the development on the character and appearance of the area, having particular regard to the roof.

Reasons

14. The site relates to a small parcel of land to the rear of two residential properties. The wider area mainly comprises residential development. The deemed planning application and therefore development before me relates to the erection of a building, being the garage building constructed at the site.
15. The building itself is in very close proximity of the footway and is prominent within the street scene.
16. The roof of the building is not a mansard roof, but a crown roof owing to the provision of a significant flat roof section. Even if the pitch of the roof is the same as that previously granted planning permission, the building, owing to the flat roof section, appears squat and bulky. Accordingly, whilst the mass may not have increased, the massing and proportions of the roof are a significant departure.
17. Given I could see during my site visit that buildings in the surrounding area largely consist of dual-pitched roofs, and little evidence of other gable-ended crown roofs have been brought to my attention, the roof design appears particularly conspicuous in its surroundings. It therefore does not reflect local patterns of development and is not an enhancement. Moreover, the box gutter and consequent higher eaves results in an awkward and bulky junction, which can be seen from the public realm. This would not be ameliorated by painting.
18. I recognise there was an intention to reduce the height of the building and that the rooflights do not overlook neighbouring properties. However, planning permission had already been granted for a building with a dual-pitched roof and overlooking is not a matter in dispute between the parties. I also have no evidence the development has facilitated the provision of habitable accommodation within the building, albeit this does not weigh in favour of retaining the building as constructed.
19. I therefore conclude the development, having particular regard to the roof, is harmful to the character and appearance of the area in contravention of Policy PP27 of the Poole Local Plan adopted November 2018. This policy, amongst other things, requires development to reflect local patterns of development in terms of bulk and massing, including that of the roof.

Conclusion

20. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

Overall Conclusion

21. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeals A and B

22. It is directed that the enforcement notice be corrected by:

- deleting the words '*a) Cease all further development on the site on the land affected. b) Demolish the existing structure on the land affected. c) Ensure that all the resulting materials from the compliance with a) and b) above are removed from the land affected;*' and replacing them with the words '*a) Demolish the existing structure on the land affected. b) Ensure that all the resulting materials from the compliance with a) above is removed from the land affected.*'

23. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR