



Appeal Decision

Site visit made on 24 January 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 15th February 2023

Appeal Ref: APP/V1260/W/22/3306893

15 Branksea Close, Poole BH15 4DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Philippa Sherman against the decision of Bournemouth Christchurch and Poole (BCP) Council.
 - The application Ref: APP/22/00311/F dated 8 March 2022, was approved on 8 July 2022 and planning permission was granted subject to conditions.
 - The development permitted is raise height of existing boundary wall and raise ground level (part retrospective)
 - The condition in dispute is No 2 which states that: The boundary wall hereby permitted shall be finished in white paint. The required finish shall be thereafter retained.
 - The reason given for the condition is: To ensure that the external appearance of the boundary wall is satisfactory and in accordance with Policy PP27 of the Poole Local Plan (November 2018).
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Decision

1. The appeal is allowed and the planning permission Ref APP/22/00311/F to raise height of existing boundary wall and raise ground level (part retrospective) at 15 Branksea Close, Poole BH15 4DR granted on 8 July 2022 by Bournemouth Christchurch and Poole (BCP) Council, is varied by deleting condition 2.

Preliminary Matters

2. The appeal was made within six months of the grant of planning permission and falls to be considered under Section 79 (1) of the Act.
3. A number of different heights have been referenced in the representations before me, but I have had regard to the heights referenced on the approved plans, as I am required to do.

Main Issue

4. The main issue in this appeal is whether the condition is reasonable and necessary to maintain the external appearance of the boundary wall.

Reasons

5. The appeal property is a detached bungalow within Branksea Close and is being refurbished and extended following the grant of planning permission (Council's Ref: APP/18/01207/F). The rear and sides have an unpainted concrete block wall of varying height and under Permission APP/22/00311 granted by the

Council, permission has been granted for works, partly already undertaken, to increase the height of the wall to just over 2.1m in part together with a raising of the ground levels by approximately 0.1m. The permission was granted subject to a condition (Condition No 2) requiring the wall to be finished in white paint.

6. It would appear that the Council were seeking to find a position that would satisfy all involved and I have noted that a white painted finish is shown on the approved plan. However, there unfortunately appears to be neighbour related concerns regarding the erection of increased height of the wall and its proposed painting. Unless agreement is reached between the Appellant and her surrounding neighbours, the condition could not be complied with in respect of the side of the wall facing into the garden of one or more of the neighbours.
7. Paragraph 56 of the National Planning Policy Framework (Framework) sets out the tests to be applied to the imposition of conditions and these are also addressed under the Planning Practice Guidance (PPG). Whilst the painting of the wall within the appeal site and facing inwards towards the appeal property remains within the control of the Appellant, agreement would need to be had with each of the affected neighbours in order to comply with the condition in respect of the side of the wall facing towards their properties. This agreement could not be required under planning or imposed by the Appellant and would depend on the views and decisions of each affected neighbour. As a result, I do not consider that the imposition of this condition passes each of the tests set out under the Framework and PPG, in that it would not be reasonable and practicable and enforceable, because of the need for third party consents.
8. It is open to me to reconsider the matter afresh as though the application had been made to me in the first instance. The issue I am therefore required to consider is whether it would have been necessary to refuse permission without this condition being imposed, either in terms of the impact on the character and appearance of the local area or on the amenities of neighbours. In this regard, and I have no information to suggest otherwise, for example that permitted development rights have been removed in respect of boundary treatments, a boundary wall could be built up to 2m in height without the need for planning permission. I do not consider that there would be a material difference in terms of the effect on the character and appearance of the local area or the amenities of neighbours between a boundary wall up to 2m and the boundary wall as approved. Furthermore, and specifically in terms of the street scene, the wall is shown to step down towards the front of the site where the principal public views would be obtained.
9. I am therefore satisfied that the condition is not required to maintain the external appearance of the wall in the interests of both protecting the character and appearance of the local area as well as the amenities of neighbours.
10. There has been extensive correspondence from the Appellant and her neighbours which I have taken into account although much of this does not in my view directly relate to the planning issues, on which my decision has been based. Concerns regarding the structural safety of the wall would need to be addressed under other legislation.

11. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be allowed and the condition removed.

L J Evans

INSPECTOR