



Appeal Decision

Site visit made on 19 July 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/V1260/W/22/3309665

227 Bournemouth Road, Poole BH14 9HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for prior approval required under Article 3(1) and Class AA of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr R La Bouchardiere (227 Bournemouth Road Limited) against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref APP/22/00435/PA, is dated 30 March 2022.
 - The development proposed is described on the application form as, "Erection of additional 2 storeys to create additional habitable accommodation. The exterior of the extensions shall match that of the existing house".
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Decision

1. The appeal is dismissed, and prior approval is refused.

Preliminary Matters

2. The Council have referred to development plan policies. In this regard, prior approval appeals are not determined on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004. However, I have taken the development plan policies into account insofar as they are relevant to the prior approval matters under consideration.
3. In line with paragraph AA.3(12)(b) of Class AA of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), I have had regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matters of the prior approval.
4. Under Article 3(1) and Class AA of Part 1 of Schedule 2 of the GPDO, planning permission is granted for the enlargement of a dwellinghouse by construction of additional storeys. The Council have indicated that they would have refused to grant prior approval in relation to paragraph AA.2, making reference to the effect of the proposal on the external appearance of the dwellinghouse and on the amenity of adjoining premises. These matters have been reflected in the main issues, below.

Main Issues

5. The main issues are whether prior approval should be granted under Class AA of Part 1 of Schedule 2 of the GPDO, having particular regard to the effect of the proposal on:
 - the external appearance of the dwellinghouse; and

- the amenity of adjoining premises, in relation to light and outlook.

Reasons

External Appearance

6. Paragraph AA.2(3)(a)(ii) of Class AA of Part 1 of Schedule 2 of the GPDO refers to the external appearance of the dwellinghouse. In this regard, the *CAB Housing Ltd*¹ judgment confirmed that the control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality.
7. The appeal site comprises a 2-storey detached dwelling situated in a predominantly residential area. Although there is a degree of variation in the heights of buildings along nearby parts of Bournemouth Road, and some 3-storey buildings are present near the site, commonly buildings in the vicinity of the site are 2-storeys and a notable consistency in height is evident.
8. 227 Bournemouth Road (No 227) currently appears subordinate in height and massing in comparison with its neighbour, 225 Bournemouth Road (No 225). As such, it currently fits in well amongst the row of broadly similarly-proportioned properties near to it along Bournemouth Road.
9. The proposed development would add 2 additional storeys to No 227. Although these works would follow the form and design of the existing upper floor of No 227, No 227 would no longer appear subordinate to No 225 but rather would appear significantly taller than No 225. No 227 would also appear noticeably out-of-character in the street scene, as extended, due to the uplift in height and massing that would result when set against the local pattern of buildings in these respects.
10. Moreover, to extend No 227 in the manner proposed would result in a building with an unduly vertical emphasis, with proportions which would not be reflective of the locality.
11. It is recognised that an increase in height, resulting in a different relationship between buildings, is an inevitable consequence of implementing the permitted development right. However, the *CAB Housing Ltd* judgment held that the right, and the principle it recognises, is contingent upon the grant of prior approval for a specific proposal². As such, considering the demonstrable conflict with respect to the requirements of paragraph AA.2(3)(a)(ii), identified above, my findings remain unchanged.
12. I therefore find that the proposal would have an unacceptable and harmful effect on the external appearance of the dwellinghouse. Whilst not determinative, I have had regard to Policy PP27 of the Poole Local Plan (adopted 2018) (Local Plan). To the extent that they are relevant considerations within the terms of the GPDO, the proposal would conflict with its aims that, amongst other things, development will be permitted provided that, where relevant, it reflects or enhances local patterns of development and neighbouring buildings in terms of height and massing.

¹ *CAB Housing Ltd v SSLUHC & Broxbourne BC* [2022] EWHC 208 (Admin), [2023] EWCA Civ 194

² Paragraph 72 of the High Court judgment in *CAB Housing Ltd*

Amenity of Adjoining Premises

13. No 227 is situated in a high density residential area. No 227 is situated close to the rear boundaries and gardens of 1A, 1, and 3 Ponsonby Road (Nos 1A, 1, and 3).
14. No 227 would be extended upwards by 2 additional storeys and given its close proximity to the rear gardens and rear habitable room windows of Nos 1A and 1, the proposed development would be likely to unduly reduce sunlight to those areas in the afternoon and early evenings, thereby harming the living conditions of the occupiers of those properties. Given that No 3 is situated further north, the effects in this regard would not be harmful to the living conditions of the occupiers of No 3.
15. Similarly, the proposed development would in effect create a tall 4-storey wall in close proximity to the rear gardens and rear habitable room windows of Nos 1A and 1. This would result in an overbearing visual impact to those spaces which would be harmful to the living conditions of the occupiers of Nos 1A and 1. Again, given that No 3 is situated further north, the effects in this regard would not be harmful to the living conditions of the occupiers of No 3.
16. Although it is an inevitable consequence that the right would result in a taller building with likely impacts on the living conditions of nearby occupiers, the *CAB Housing Ltd* judgment held that the right, and the principle it recognises, is contingent upon the grant of prior approval for a specific proposal³. Therefore, considering the demonstrable conflict with respect to the requirements of paragraph AA.2(3)(a)(i), identified above, my findings remain unchanged.
17. Reference has been made to the orientation of No 227 and to the orientation of other nearby properties, but few details have been provided to illustrate how this factor would mitigate the harms identified above. In any event, I have taken account of the orientations of all relevant properties in making my assessments under this main issue.
18. I therefore find that the proposal would have an unacceptable and harmful effect on the amenity of Nos 1A and 1, in relation to light and outlook. Whilst not determinative, I have had regard to Policy PP27 of the Local Plan. To the extent that they are relevant considerations within the terms of the GPDO, the proposal would conflict with its aims that, amongst other things, development will be permitted provided that, where relevant, it is compatible with surrounding uses and would not result in a harmful impact upon amenity for both local residents and future occupiers considering levels of sunlight and whether the development is overbearing or oppressive.

Other Matters

19. With regards to the various purported benefits of the proposal (including the creation of additional habitable accommodation and the efficient use of land), the GPDO offers no discretion where conflict is found with its requirements. As such, these matters do not change my findings on the main issues in this appeal.

³ Paragraph 72 of the High Court judgment in *CAB Housing Ltd*

Conclusion

20. As the proposal would not comply with paragraph AA.2(3)(a)(ii) nor paragraph AA.2(3)(a)(i) of Class AA of Part 1 of Schedule 2 of the GPDO, prior approval cannot be given for the proposal, and the appeal should therefore be dismissed.

Alexander O'Doherty

INSPECTOR