



Appeal Decisions

Site visit made on 7 November 2023

By Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal A Ref: APP/V1260/C/22/3306475

Appeal B Ref: APP/V1260/C/22/3306476

49 Southbourne Road, Bournemouth BH6 5AG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Marc Ridout (Appeal A) and Mrs Sarah Ridout (Appeal B) against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
- The notice was issued on 16 August 2022.
- The breach of planning control as alleged in the notice is the erection of a front boundary wall with fence panels atop, an electric sliding vehicular access gate and timber side fencing, in excess of 1 m adjacent to a highway (as outlined in red on the plan attached to the notice) and without planning permission the installation of a tarmac driveway (as outlined in purple on the attached plan).
- The requirements of the notice are either: (a) Remove the northern boundary fencing, pillars and electric sliding vehicular access gate in its entirety; (b) Erect a vehicle proof barrier for the extent of the red line at a maximum height of 1 m from pavement level; (c) Reduce the height of the western side boundary fencing to a maximum height of 1 m above highway (pavement) level for a distance of 2 m when measuring from the back edge of the pavement. Remove all resulting materials and debris from the site resulting from steps (a), (b) and (c). Or: (d) Reduce the height of the northern boundary treatment to a maximum height of 1 m above highway (pavement) level and remove the sliding vehicular access gate; (e) Erect a vehicle proof barrier for the remainder of the northern boundary at the western end, at a maximum height of 1 m above pavement level; (f) Reduce the height of the western side boundary fencing to a maximum height of 1 m above highway (pavement) level for a distance of 2 m when measuring from the back edge of the pavement. Remove all resulting materials and debris from the site resulting from steps (d), (e) and (f).
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (f) & (g) 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. Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Appeal C Ref: APP/V1260/W/22/3306477

49 Southbourne Road, Bournemouth BH6 5AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Arcane Design Studio against the decision of Bournemouth Christchurch and Poole Council.
- The application Ref 7-2022-14916-A, dated 20 June 2022, was refused by notice dated 27 July 2022.
- The development proposed is described as '*demolition of unsafe front boundary wall and removal of conifer hedge. Reinstate new wall with fence panels atop.*'

Decisions

1. Appeal A-The appeal is allowed insofar as it relates to the installation of a tarmac driveway 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 installation of a tarmac driveway at 49 Southbourne Road, Bournemouth BH6 5AG referred to in the notice, subject to the condition in the Schedule at the end of this Decision. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the erection of a front boundary wall with fence panels atop, an electric sliding vehicular access gate and timber side fencing in excess of 1 m adjacent to a highway and planning permission is refused for that part of the development on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.
2. Appeal B-The appeal is dismissed and the enforcement notice is upheld.
3. Appeal C-The appeal is dismissed.

Appeal A, (Ground) (a) appeal & Appeal C

Main Issues

4. The main issues in these appeals are:
 - The effect of the development on the character and appearance of the surrounding area.
 - The effect on highway safety.
 - Whether suitable provision is made for surface water drainage.

Reasons

Character and appearance

5. The appeal property contains a substantial period residential building, used as flats. A low wall, rendered and painted white, is along the frontage adjacent to the street, with a solid fence above. The overall height of the wall and fence is about 1.8 m. A solid sliding electric gate of similar height is to the right of the wall and fence. The fence and gate are constructed of a composite material, finished in a dark grey colour. Solid timber fencing of a comparable height is along the side boundary of the property adjacent to the gate. A tarmac hard surface is between the front of the building and the wall, fence and gate.
6. The property is located in an established residential area where the buildings are generally of similar scale, have external finishes of brickwork or sometimes render and they are set back from the street behind front garden areas. For the most part, the frontage boundary treatments comprise low walls constructed in similar materials to the buildings, often with taller maturing planting behind. A similar low brick wall and planting fronted the property prior to the development. The combination of low-profile walls and maturing planting on the frontages has a significant softening effect in relation to the substantial built forms. Where such planting is absent, there are greater views over the frontage towards the principal elevations of the buildings and their key architectural features. These attributes all contribute significantly to the pleasing, well-ordered residential character and appearance of the locality.
7. The development is appreciably taller than the built elements of many frontage boundary treatments in the immediate and wider vicinity. The straight, vertical hard-edged profiles of the wall, fence and gate also differ substantially from the softer, more naturalistic shapes of the frontage planting. These factors contribute to the development having a significant visual presence in the street

scene. This is given further emphasis by the contrasting white and dark grey finished colours of the development, which do not sit comfortably alongside the mellow, predominantly red brick finish of the building and a number of nearby properties. As a result, the development is perceived as an alien feature, entirely at odds with the generally less assuming visual qualities of the built frontage treatments in the vicinity and with a 'defensive' appearance which has led to an appreciably more built-up feel in the environs. Although a couple of the nearby walls are rendered and painted white, that alone is insufficient to assimilate the development visually with its surroundings. Besides, unlike in this appeal the buildings behind those walls are mainly rendered too.

8. During the visit, I saw incidences of tall solid timber fencing adjacent to the footway in this and neighbouring streets. A number of such incidences were also drawn to my attention by the appellant. However, such fencing is often on secondary frontages not, as in this appeal, in front of the principal elevation of the building. Also, such fencing generally tends to be somewhat isolated and does not reflect the prevailing pattern of development in the immediate and wider area. Some incidences of the fencing also serve to further illustrate the visually harmful effects of this form of development. Moreover, without details of the circumstances in which the fencing originated, it is difficult to make a comparison with the development. It is unclear for example whether planning permission was recently granted for any tall fencing in the vicinity.
9. I took the opportunity to view the property in the recent appeal decision referred to, relating to a front boundary wall with tall gates and gate piers elsewhere in the town¹. In doing so, I could clearly see what the Inspector considered was the striking variation in frontage treatments, with taller gates and gate piers not being uncharacteristic of the street scene. In addition, the appellant referred to an example of tall fencing in the wider area recently granted planning permission². I visited that property as well, observing similar development prevalent throughout the locality. As a result, in both cases the visual qualities of the surrounding areas differ markedly from those relevant to this development.
10. The Council did not object to the appearance of the hard surface and there is no sound reason for me to do so. In any event, it is highly likely that the pavements beneath the hard surface would have an unsightly appearance were the latter to be removed. Although this 'fallback' position was initially raised under the ground (f) heading, it is more appropriately considered as part of the deemed planning application arising from the ground (a) appeal, as it relates to the merits of part of the development.
11. For the reasons set out above, as a whole the development has significantly and harmfully eroded the character and appearance of the surrounding area. This fails to accord with Policy CS41 of the Bournemouth Local Plan: Core Strategy, which seeks to ensure that all development and spaces are well designed and of a high quality, as well as to resist development which by virtue of its design would be detrimental to the local built environment, amenity or character. Furthermore, by not achieving a well-designed place the development is inconsistent with the revised National Planning Policy Framework (the Framework). Since no further details were supplied, I express no view in respect of any conflict with the Council's Residential Design Guide.

Highway safety

12. The driveway on the left of the building existed prior to the development. The width and alignment of the driveway is largely unchanged. The appellant

¹ Appeal Ref: APP/V1260/D/22/3300742.

² Council Ref: 7-2020-19186-B.

explained that the sliding gate provides alternative pedestrian access if a vehicle is parked on the driveway, the latter being in daily use for vehicular access to the property. I note that prior to the development, a pedestrian entrance occupied a similar position to the gate.

13. Nevertheless, it is entirely possible that the gate would be used for vehicular access purposes. The gate is sufficiently wide to enable a vehicle to pass through. The gate is much wider than is necessary for solely pedestrian use, its width not being dissimilar to the driveway. The appellant also referred to opening the gate to drive into the property. Furthermore, the Council provided a recent photograph of a vehicle parked so that it could egress the property if the gate had been opened. In any event, whilst the appellant may intend to use the gate for pedestrian access only, there is little assurance that future occupiers of the property would do the same.
14. The property is on a residential street which leads to and from a number of similar streets. From the adjoining crossroads a neighbouring street leads to a district shopping centre, a short distance away. Although pedestrian and vehicular traffic was relatively light during my visit, it is highly likely that this and nearby streets would be considerably busier at other times.
15. The overall height of the development means that drivers accessing the property through the gate would be afforded limited views of pedestrians approaching on the footway, or of oncoming vehicles. Similarly, pedestrian and vehicular traffic approaching the property would have little advance warning of vehicles emerging through the gate. The limited inter-visibility between vehicles egressing the property through the gate and oncoming traffic falls well short of the requirement for a minimum of 2 m by 2 m splays with no obstruction above 0.6 m in height to protect pedestrian safety, set out in the Council's Parking Standards Supplementary Planning Document.
16. Furthermore, the gate is positioned not far from the back edge of the footway. This means that a vehicle waiting for the gate to open to access the property is likely to be on or in the vicinity of the adjacent crossroads, thereby obstructing the free flow of traffic and reducing the view of drivers of oncoming vehicles. That there have in the last five years been two reported accidents in the vicinity, one of which involved the crossroads, emphasises the importance of not permitting an unsafe access at the property. Any reduction in visibility in relation to the driveway is likely to have been modest, as the overall height of the pre-existing planting was no lower than the development. However, this has a limited bearing on whether the gate is safe for use by vehicles.
17. Therefore, I conclude that the development causes unacceptable harm to highway safety. This is in conflict with CS Policy CS16, which requires new development to accord with the Council's parking standards as well as CS Policy CS18, which requires development to not compromise existing walking networks. There is also conflict with Policy BAP5 of the Boscombe and Pokesdown Neighbourhood Plan, which requires development to provide safe routes, including safe road crossings. Furthermore, the unacceptable impact on highway safety is inconsistent with the Framework.

Surface water drainage

18. Whilst not a reason for issuing the notice, this matter was raised in the Council's written submissions. Based on the limited information available, there is little assurance that the drain in front of the driveway is sufficient to safeguard against the risk of surface water flooding from the hard surface. However, I am satisfied that, should permission be granted, a suitable planning condition could be imposed to require the installation of an approved scheme of surface water drainage. As a result, there would be no conflict with CS Policy CS4, which requires hard surfaces to incorporate appropriate sustainable

drainage systems capable of ensuring that the level of surface water leaving the property is no greater than that prior to the development. Similarly, by safeguarding against the increased risk of flooding the hard surface would be consistent with the Framework.

Planning Balance & Conclusion-Appeal A, Ground (a) appeal & Appeal C

19. The development causes unacceptable harm to the character and appearance of the area and to highway safety, in conflict with Development Plan policies referred to above and the Development Plan taken as a whole. Also, the development is inconsistent with the Framework. However, as the hard surface does not cause unacceptable harm in the above respects and suitable provision for surface water drainage can be made, there is no conflict with the Development Plan or inconsistency with the Framework in relation to that part of the development. There are no material considerations which indicate that the decision should be taken other than in accordance with the Development Plan. The hard surface is clearly severable from the rest of the development. At s177 (1)(a), the Act provides that planning permission may be granted for part of the development in the notice. Consequently, I conclude that the ground (a) appeal in Appeal A should succeed in part i.e., in relation to the hard surface only, whilst Appeal C should not succeed.

Conditions

20. I shall impose a condition requiring the approval and implementation of a scheme of surface water drainage within a defined timescale, for the reason referred to above. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the required works, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the hard surface may only remain if the appellant complies with its requirements.

Appeals A & B

Ground (f) appeals

21. The ground of appeal is that the requirements of the notice are excessive.
22. An enforcement notice can have the purpose of remedying the breach, including by making any development comply with the terms of any planning permission which has been granted in respect of the land, or by restoring the land to its condition before the breach took place. A notice can also have the purpose of remedying any injury to amenity which has been caused by the breach. Whilst the notice does not state as such, its purpose must be the former. The requirements are clearly aimed at restoring the property to its condition prior to the breach taking place, including by removing the wall, fence and gate, or by reducing the front boundary to no more than 1 m high to comply with the terms of the planning permission granted by the GPDO³ at Article 3, Schedule 2, Part 2, Class A, paragraph A.1 (a)(ii).
23. The side fencing forms part of the matters alleged in the notice. The requirement to reduce the height of the fencing to no more than 1 m for a distance of 2 m from the highway is sufficiently clear. There is no dispute that this fencing is adjacent to the highway and that it is not immune from enforcement action. If the fencing were to remain unaltered it would sustain part of the breach and the purpose of the notice would not be achieved. Therefore, varying the notice to retain the side fencing as erected does not

³ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

represent an obvious alternative to the notice requirements. Due to the partial success on ground (a), the requirements would no longer have effect in relation to the hard surface. No other alternative to the notice requirements was suggested and to my mind there is no alternative that would also remedy the breach.

24. Therefore, the notice requirements are not excessive; they are a proportionate remedy involving the minimum works necessary to remedy the breach. The ground (f) appeals fail.

Ground (g) appeals

25. The ground of appeal is that the time for complying with the notice requirements falls short of what should reasonably be allowed.
26. The remedial works are relatively limited in scale. There is no firm evidence that a workforce with particular skills would need to be engaged or that the use of specialist equipment would be involved. The works should be a relatively simple task for a suitably experienced small building contractor. A significant number of such contractors are likely to have sufficient expertise to undertake the works. There is little to suggest that the appellants could not search for and appoint a suitable contractor reasonably quickly, or that the appointed contractor could not begin work at relatively short notice. In my estimation, the works are unlikely to take longer than a few weeks at most to complete.
27. Given the above factors, in my view the three-month period specified in the notice strikes an appropriate balance between affording the appellants sufficient time in which to arrange for and have the remedial works carried out, whilst also remedying the planning harm identified above as soon as is practicable. Moreover, the harm to highway safety identified provides some urgency to remedying the breach by the earliest date possible. Extending the time for compliance to six months on the other hand would perpetuate the breach and the planning harm caused.
28. Therefore, the time allowed for complying with the notice requirements is reasonable and not too short. The ground (g) appeals also fail.

Conclusions

29. Appeal A-For the reasons given above I conclude that the appeal should succeed in part only and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act.
30. Appeal B-For the reasons given above I conclude that the appeal should not succeed.
31. Appeal C-For the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR

PLANNING CONDITIONS SCHEDULE

Appeal A:

- 1) Unless within three months of the date of this decision a scheme for the drainage of surface water from the tarmac driveway hereby approved to a permeable or porous area of surface within the site is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within three months of the Local Planning Authority's approval, the tarmac driveway and its constituent materials shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within six months of the date of this decision, the tarmac driveway and its constituent materials shall be removed until such time as a scheme approved by the Local Planning Authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.