



Appeal Decision

Site visit made on 4 February 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03rd March 2025

Appeal Ref: APP/V1260/C/23/3333178

The land and premises 4A Elmstead Road, Poole BH13 7EZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr C Hunt against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
 - The notice was issued on 20 October 2023.
 - The breach of planning control as alleged in the notice is without planning permission, within the approximate position indicated by the green line on the attached plan, the erection of a means of enclosure over a height of one (1) metre, adjacent to a highway used by motor vehicles.
 - The requirements of the notice are: a) The removal of the means of enclosure which includes all respective posts, gates and fencing panels, along the front boundary with Elmstead Road indicated by the green line on the attached plan. b) That all resulting materials from compliance with a) above are removed from the land affected.
 - The period for compliance with the requirements is within 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (f) of the Act. 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. It is directed that the enforcement notice is varied by the addition of the text 'Or, as an alternative to the above steps, c) Reduce the height of the means of enclosure to ensure that no part of it exceeds 1 metre in height above ground level' at paragraph 5 of the notice, after step 'b)'. Subject to the variation, 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 Act.

Ground (c)

2. To succeed under this ground of appeal the appellant needs to show that the means of enclosure does not constitute a breach of planning control. The onus is on the appellant to show this is the case, on the balance of probabilities.
3. There is no dispute that the means of enclosure constitutes development requiring planning permission. Article 3(1) and Class A of Part 2, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, subject to limitations. It is claimed that a pre-existing means of enclosure has been altered as permitted by the GPDO, on account of pre-existing vertical supporting posts remaining in place.
4. There is very little evidence to support the appellant's claims in this regard, and based on everything I have read and seen it is unlikely that the existing vertical supporting posts are the same ones which existed previously. However, even if the

vertical supporting posts referred to formed part of the previous means of enclosure, their retention would have been insufficient to ensure the pre-existing means of enclosure had merely been modified. This is because the evidence shows it would have been likely that the previous means of enclosure had been substantially replaced, with the former railings and sliding gate removed, and new solid metal panels and gate installed. Furthermore, it remains unclear whether the height of the existing means of enclosure exceeds the height of the previous means of enclosure.

5. As a matter of fact and degree, the appellant has failed to show it is more likely than not that the previous means of enclosure has been altered in accordance with any planning permission or without the need for any planning permission. It has not been shown, on the balance of probabilities, that the existing means of enclosure does not constitute a breach of planning control.
6. The appeal under ground (c) must therefore fail.

Ground (a) and the deemed application for planning permission

7. The main issue is the effect of the development on the character and appearance of the area.
8. The site is occupied by a large detached dwelling and garage with hipped roofs and sprocketed eaves. The surrounding area is characterised by similarly large detached dwellings set back from the highway, within spacious plots, interspersed with planting. There is a broad mix in the designs, styles and heights of boundary treatment locally, but these are generally constructed of metal railings, stone, brick or timber, while some comprise planting. Front boundary treatment in the area is generally understated and sensitive to the attractive low-density residential character of the area and its verdant setting.
9. The development comprises solid metal panels which are described as measuring under 1.8 metres (m) in height, with a roughly central sliding gate. The panels have a clean and crisp finish with regular alternating shiny and brushed vertical strips.
10. Overall, the development has a tidy but imposing and overtly contemporary appearance on account of its height combined with its solid metal finish, which are more industrial in character, rather than residential. Therefore, although the development may be described as being of similar height compared to other local front boundary treatment, the imposing nature of the solid metal panels in this setting gives the impression that the development is excessively tall.
11. Examples of solid front boundary treatment of similar heights in the local area tend to be sympathetic to the character of the area on account of their materials and restrained appearances. The development is seen in stark contrast to other front boundary treatment due to its brash solid metal finish, which does not reflect or complement the style of buildings at the site or the pleasant characteristics of the distinctly residential area. In this context, it is an incongruous, intrusive and visually jarring feature in the street scene, harmful to the character and appearance of the area, and therefore comprises a poor standard of design for this particular location.
12. For the above reasons the development is contrary to Policy PP27 of the Poole Local Plan (2018). This requires a good standard of design for all new

development, which is encouraged to reflect or enhance local patterns of development, amongst other things.

13. The appeal under ground (a) therefore fails and the deemed application for planning permission is refused.

Ground (f)

14. To succeed under this ground of appeal the appellant needs to show that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused.
15. The notice requires the removal of the development from the land. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity.
16. Altering the development so that its height does not exceed 1m from ground level may achieve the same as what could be erected in accordance with the above planning permission granted by the GPDO. However, that would not remedy the breach because the planning permission granted by the GPDO does not apply retrospectively. Furthermore, as the previous means of enclosure has been substantially replaced or entirely removed, its reinstatement would comprise a separate act of development which, on the evidence, would not benefit from planning permission. I am also unconvinced that planning permission exists for another alternative means of enclosure referred to by the appellant, on account of the lack of details provided.
17. In summary, none of the alternative options put forward would achieve the purpose of the notice. However, I must have regard to the appellant's fallback position authorised by the GPDO, which is not in dispute, and the likelihood that the appellant would erect another means of enclosure which does not exceed 1m in height. Therefore, although reducing the height of the development to no more than 1m above ground level would not achieve the purpose of the notice, it would essentially result in the same outcome with less cost and disruption. I shall vary the requirements of the notice accordingly, but I am not aware of any other obvious alternatives or lesser steps which would achieve the purpose of the notice with less cost and disruption.
18. For the above reasons the appeal under ground (f) succeeds in part and I shall vary the steps required to be taken by the notice to include the alternative option of reducing the height of the development to no more than 1m above ground level.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed, other than to the extent outlined above in respect of the appeal under ground (f). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR