



Appeal Decision

Site visit made on 19 April 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2025

Appeal Ref: APP/V1260/C/24/3337300

Land and premises at 135 West Hill Road, Bournemouth BH2 5EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Gunde & Kingsley Property Group against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
 - The notice was issued on 20 December 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a ground floor side and front extension with fully opening roof and windows for use as additional seating in connection with the existing restaurant (as hatched black on the site plan attached to the notice).
 - The requirements of the notice are: (i) Dismantle and remove the extension, as hatched black on the plan attached to the notice, in its entirety and return the external side and front wall of the premises to its original condition as shown in appendix B attached to the notice. (ii) Remove all resultant materials from the land affected following compliance with (i) above.
 - The period for compliance with the requirements is six months.
 - The appeal 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 fee has 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 has lapsed.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. There is no deemed planning application following an appeal having been made on ground (a) and the relevant fee has not been paid. Therefore, planning merits considerations are not before me in this appeal.

Ground (f) appeal

3. The ground of appeal is that the requirements of the enforcement notice are excessive.
4. The appeal site contains a substantial building used as an hotel and restaurant, situated adjacent to a road junction. The notice attacks a single storey extension to the restaurant. The extension protrudes up to the back edge of the pavement on the north facing and part of the west facing elevations of the building. The extension construction materials are mainly glazing with dark coloured metal framing.
5. An enforcement notice can have the purpose of remedying the breach, including by restoring the land to its condition before the breach took place, or it can have the purpose of remedying any injury to amenity which has been caused by the breach. In this case, although the notice does not state as such, its purpose must be to remedy the breach. The notice requires the extension to be dismantled and removed in its entirety, including the constituent materials. The notice does not require the extension to be modified in some form. Removing the extension along

with its constituent materials would restore the site to its condition before the breach took place.

6. Set in the above context, any alternative requirement which stopped short of removing the extension in its entirety would sustain the breach and therefore would not achieve the purpose of the notice. The appellant did not advance any alternative to the notice requirements which would provide for retaining part or all of the extension whilst still remedying the breach. In my view, no such alternative exists.
7. Therefore, the notice requirements are a proportionate remedy, being the minimum actions necessary to restore the site to its condition before the breach took place. The ground (f) appeal fails.

Ground (g) appeal

8. The ground of appeal is that the period specified for complying with the notice requirements falls short of what should reasonably be allowed.
9. The appellant sought an extension of the compliance period to 31 January 2025. I understand that this was to allow for a recent planning application to be determined by the Council and if relevant, for appeals against the refusal of this and an earlier application to be submitted and decided. Mention was also made of the possible submission of a further revised planning application. Even so, the application referred to was refused by the Council in February 2024. No further applications or outstanding appeals were drawn to my attention. Moreover, by making this appeal the appellant has already delayed when the notice will come into effect beyond the extended period sought.
10. Dismantling the extension is likely to be a relatively straightforward task for a suitably experienced building contractor. According to the Council the extension took about a week to erect, so dismantling it is unlikely to take significantly longer. In that case, six months would provide the appellant with ample time for the remedial works to be undertaken in addition to arranging for any necessary funding, securing the services of a contractor and waiting for that contractor to become available. There would also be considerable time available to the appellant in which to make any alternative arrangements to minimise the impact on the business as far as possible.
11. Accordingly, the period specified in the notice is not too short and is reasonable, striking an appropriate balance between remedying the breach as soon as practicable whilst not imposing a disproportionate burden on the appellant. Any longer period however would do little more than perpetuate the breach and the planning harm identified in the notice. The ground (g) appeal also fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Stephen Hawkins

INSPECTOR