



Appeal Decisions

Site visit made on 19 May 2025

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

Appeal A: APP/V1260/C/24/3341337

The land and premises at 184-186 Old Christchurch Road, Bournemouth BH1 1JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Roukan Kallas of Tasty (Dorset) Limited against an enforcement notice issued by Bournemouth, Christchurch and Poole Council.
 - The enforcement notice was issued on 14 February 2024.
 - The breach of planning control as alleged in the notice is: The installation of a flue fixed to the rear elevation wall extending from ground-floor level to roof level.
 - The requirements of the notice are: i) Remove and disconnect the flue from the rear elevation and roof, together with any supporting fixings to the wall; and ii) Remove all resulting materials from the land following compliance with step i).
 - The period for compliance with the requirements is: 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (e), (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 as amended have lapsed.
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Appeal B: APP/V1260/C/24/3344061

- The enforcement notice was issued on 9 April 2024.
 - The breach of planning control as alleged in the notice is: The erection of a single storey rear extension at basement level.
 - The requirements of the notice are: a) Demolish the single storey rear extension at basement level, including all footings/foundations and disconnect all main services. b) Following compliance with step a), make good the south elevation by bricking up any exposed openings on this elevation and use materials which match those used of the existing building. c) Remove all resulting materials from the land following compliance with steps i) and ii).
 - The period for compliance with the requirements is 8 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Appeal B - The Enforcement Notice

3. Requirement c) of the Appeal B notice makes reference to steps i) and ii), when this should be a) and b). Injustice to the parties however does not arise from making this correction.

Appeals A and B – The ground (e) appeals

4. This ground of appeal concerns whether the enforcement notices were properly served on everyone with an interest in the land.
5. The appellant raises that there is a mortgage on the premises and consequently a registered charge in the name of a company, for whom the notices have not been served upon. The Council has however provided a certificate of service which demonstrates on the balance of probabilities that this interested party was served with a copy of the Appeal A notice.
6. Subsequent to this, the Council received correspondence from that company to advise they no longer held a financial or other interest in the land. Consequently, they were not served with a copy of the latter Appeal B notice, which was entirely correct.
7. The appeals on ground (e) therefore fail.

Appeals A and B – The ground (b) appeals

8. For the ground (b) appeals to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breaches of planning control, namely the installation of a fixed flue from ground-floor level to roof level, as well as the erection of a single-storey rear extension at basement level, have not occurred as a matter of fact.
9. The appellant took over the site at the start of 2020 and asserts an existing flue had fallen from the wall and was laying in the rear yard. What could be reused was then restored to the wall with a replacement section sourced to continue the height of the flue to the roof slope. An invoice pertaining to ducting and installation is then provided, but it does not clearly evidence whether any existing ducting was reused or whether it was new or simply an extension.
10. Imagery provided by the Council shows no flue to be present in July 2019, which is not contested by the appellant. Even though there is evidence of a flue in 2012, the appellant's own evidence is that they installed the entirety of the flue that has since been enforced against as a single building operation. Even if parts of a former flue were reused, or it is higher than the previous flue as the Council accept, as a matter of fact a flue from ground-floor level to roof level has nevertheless been installed when there had been no flue for at least 6 months prior to that. As a matter of fact, a flue has not therefore merely been extended.
11. The single-storey rear extension enforced against comprises walls and some roofing and is connected to part of the existing building. Notwithstanding that the walls are uninsulated, the type of seating provided within and that the development itself is said to be unfinished, the allegation relates to a single-storey rear extension, which would thus appear to be apt.

12. That reference is made to a planning application in the reasons for issuing the notice, which the appellant contends is different from that enforced against, does not demonstrate on the balance of probabilities that a single-storey rear extension has not been erected as a matter of fact.
13. The appellant has therefore failed to discharge the necessary burden of proof to demonstrate that the ground floor level to roof level flue and single-storey rear extension at basement level have not been erected as a matter of fact.
14. The appeals on ground (b) therefore fail.

Appeals A and B – The ground (f) appeals

15. The purpose of the enforcement notices are clearly to remedy the breaches of planning control and they do not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notices to be taken exceed what is necessary to remedy the breaches of planning control and propose lesser alternatives steps.
16. There is little evidence as to the actual height of any previous flue that existed at the property and then whether it was immune from enforcement action. Given the ground (b) appeal has also failed, the removal of the flue in its entirety is therefore necessary to remedy the breach of planning control. Painting it would also not remedy the breach and there is no ground (a) appeal before me.
17. The Council is then content for the single-storey rear extension to be altered to accord with a certificate of lawfulness that has since been granted for a means of enclosure. That being so, a further option for compliance can be provided to this effect. I do not find that removing the footings or then making good an original wall with matching materials is excessive, should the entire demolition of the structure be the appellant's preferred course of action. Reference to bricking up exposed openings is however potentially confusing and so I will vary this requirement to simply ensure the southern elevation is made good with matching materials.
18. The appeals on ground (f) therefore succeed to this extent.

Appeal A – The ground (g) appeal

19. The appellant contends that the time given to comply with the requirements of the enforcement notice is too short.
20. It is contended that 5 months is too short as there would be a need for a planning application for an alternative flue, otherwise the business would close. However, despite the appellants concerns regarding performance, the Council should be in a position to determine an application in a timely manner.
21. It would however not be unreasonable to align the compliance period with the Appeal B notice, at 8 months, and which would not unduly perpetuate the breach of planning control.
22. The appeal on ground (g) therefore succeeds to this extent.

Appeals A and B - Overall Conclusion

23. For the reasons given above I conclude that the appeals should not succeed. I shall uphold both enforcement notices, but with corrections and variations.

Formal Decisions

Appeal A

24. It is directed that the enforcement notice be varied by:

- substituting '8 months' as the time for compliance.

25. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

26. It is directed that the enforcement notice be corrected and varied by:

- deleting the words in section 5. b) of the notice and replacing them with the words '*b) Following compliance with step a) above, make good the south elevation using materials which match those used on the existing building.*'
- deleting the words '*...with steps i) and ii).*' in section 5. c) of the notice and replacing them with the words '*...with steps a) and b).*'
- including the following words after section 5. c) of the notice: '*OR: a) Alter or replace the single storey rear extension at basement level to fully accord with the approved details and plans of the certificate of lawfulness Council ref: 7-2024-2849-L dated 15 July 2024 and remove all resulting debris from the land.*'

27. Subject to this correction and variations the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR