
Appeal Decisions

Inquiry held on 4 and 5 October 2016

Site visit made on 5 October 2016

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 November 2016

Appeal A: APP/Z0116/C/16/3148405

Land at Trinity House (formerly the First House), Kensington Place, Bristol BS8 3AH

- 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 Mrs Nicola Walther against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 17 March 2016.
 - The breach of planning control alleged in the notice is failure to comply with conditions No 3, 4, and 5 of a planning permission Ref 13/01376/H granted on 29 May 2013.
 - The development to which the permission relates is re-modelling of existing dwelling to include basement and rear extension. The conditions in question are Nos 3, 4 and 5 which state that: *3. Further details of screening applied to cycle storage before development starts - No development shall take place until detailed drawings at the scale of 1:20 or suitable of the proposed cycle storage to the front garden have been approved in writing by the Local Planning Authority. The detail thereby approved shall be carried out in accordance with the approval. 4. Post occupation management. No removal of front boundary wall notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and/or re-enacting that Order), no removal or demolition of the front boundary wall of the property shall take place without the express permission in writing of the Council. 5. List of approved plans - The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision. 001 Site location and block plan received 3 April 2013, 011 Proposed sections received 3 April 2013, 002A Existing plans and elevations received 3 April 2013, 003P proposed plans and elevations received 3 April 2013.*
 - The notice alleges that the conditions have not been complied. In respect of condition No 3 the further details were duly approved on 20 January 2014 as contained on drawing No. DC-10 Revision A. In breach of condition 3 this has not been carried out in accordance with the approval in that neither the bike storage/bin storage nor the screening has been carried out. In respect of conditions 4 and 5 it is alleged that the development does not conform in all aspects with the plans and details shown on the plans in that there is no wall at the front whereas plan 003P clearly shows a wall at the front. It is quite clear reading the permission as a whole that it is important to have a wall at the front to safeguard the character and appearance of the conservation area as is set out in condition 4 which provides that the wall should not be removed. There was a non-material amendment to the permission which only concerned the rear of the property and was not material.
 - The requirements of the notice are: *The local planning authority require the wall to be reinstated without the railings and concrete capping but with the twice weathered bathstone coping in accordance with the drawing BA 897 003P referred to expressly in the permission. For the avoidance of doubt this should be as close as possible to the original form shown in the attached photographs and the attached plan 1219.11 (from 12/01326/LC) and recorded as varying in height from about 0.7m to 0.85m in height by the inspector on the conservation area consent condition appeal mentioned above.*
 - *For the avoidance of doubt the reinstated wall shall then be retained and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order*
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2015 or any successor provision no removal of demolition of all or part of the wall shall take place without express planning permission of the Council in writing.

- *In addition the bike storage/bin storage and screening should be built in accordance with the approved plan DC-10 Revision A.*
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/Z0116/C/16/3148407

Land at Trinity House (formerly the First House), Kensington Place, Bristol BS8 3AH

- 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 Mrs Nicola Walther against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 17 March 2016.
 - The breach of planning control as alleged in the notice is *the remodelling of existing dwelling to include basement and rear extension without a planning permission that can be relied on. If planning permission 13/01376/H does not provide for the reinstatement of the front boundary wall the correct analysis is that none of the works done of re-modelling of existing dwelling to include basement and rear extension are in fact permitted by this permission because it was incapable of implementation when the wall was taken down. The remodelling of the existing dwelling to include basement and rear extensions are thus in breach of planning control. If that analysis is correct then Bristol City Council by this notice permit all works under section 173(11) of the Town and Country Planning Act 1990 provided that the front wall is reinstated in accordance with BA 897 003P as specified below and the cycle store/bin store and screening are carried out in accordance with condition 3 and plan DC-10 Revision A which was approved on 20 January 2014.*
 - The requirements of the notice are: *The Local Planning Authority require the wall to be reinstated without the railings and concrete capping but with the twice weathered bathstone coping in accordance with the drawing BA 897 003P referred to expressly in the permission. For the avoidance of doubt this should be as close as possible to the original form shown in the attached photographs and the attached plan 1219.11 (from 12/01326/LC) and recorded as varying in height from about 0.7m to 0.85m in height by the Inspector on the conservation area consent condition appeal mentioned above.*
 - *For the avoidance of doubt the reinstated wall shall then be retained and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any successor provision no removal of demolition of all or part of the wall shall take place without express planning permission of the Council in writing.*
 - *In addition the bike storage/bin storage and screening should be built in accordance with the approved plan DC-10 Revision A.*
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Applications for costs

1. At the Inquiry applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subject of separate Decisions.

Preliminary matters

Introduction

2. There are a number of preliminary matters on which it would be helpful to provide details and set out my conclusions at the start of my decisions.
 3. The Council has issued two enforcement notices in the alternative, enforcement notice 1 (EN1) the subject of Appeal A and enforcement notice 2 (EN2) the subject
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of appeal B. In short, EN1 alleges the breach of conditions on planning permission 13/01376/H (the permission) whilst EN2 alleges that the whole of the re-modelling of the dwelling to include basement and rear extension is unauthorised.

4. They both seek to ensure the provision of a wall at the front of the property and the provision of cycle/bin storage and screening. For the avoidance of doubt, the appellant has built a wall at the front of the property which has most of the characteristics required by the notices but is not as wide as the Council seeks to achieve.
5. The gap in the front boundary wall is sufficiently wide to enable a car to access the paved forecourt of the property, albeit that there is no dropped kerb across the pavement in front. The Council seeks the wall to be re-instated so that the gap is 1.2m wide rather than 3.3m wide and only pedestrian access could be gained. The width of the current gap has been measured by the Council and is not disputed.
6. The appellant has provided a cycle store and a separate bin store along with container planting on the front forecourt. The Council became aware of this only at the opening of the Inquiry. The appellant provided photographs to assist the Inquiry. The cycle store and the bin store do not accord with the plans that the Council has approved subsequent to condition 3 of the permission.
7. All oral evidence to the Inquiry was given on oath.

Planning history

8. At the outset I should set out part of an agreed history in respect of the wall. When Mrs Walther bought the property there was a low stone wall with concrete capping and relatively modern iron railings on top. Conservation area consent (CAC) was granted by the Council to remove the railings and concrete capping and the installation of new bathstone coping. That consent did not involve reducing the length of the wall. A condition was imposed on that consent that removed permitted development rights for the removal of the wall. An appeal against that condition was dismissed on 25 January 2013.¹
9. The planning permission the subject of EN1 was granted on 29 May 2013 with various conditions including 3, 4 and 5 referred to in the banner heading. At the time the planning permission was granted the front boundary wall was in place. The railings and some concrete on the top of the wall were removed during the week of 30 September 2013. The bathstone coping on the top of the original wall was installed a few weeks later and accorded with the CAC plan. Subsequently the wall was removed on 15 January 2014. A new boundary wall was constructed with a 3.3m gap and bathstone coping. The wall remains in place.
10. On 13 November 2013 an application was made to discharge conditions 2 and 3 of the planning permission. On 20 January 2014 the Council approved details in respect of pre commencement conditions of the planning permission. The appellant says that building work did not commence until 23 June 2014.
11. I do not need to detail here the history of unsuccessful enforcement, correspondence between the main parties or ombudsman complaint subsequent to these events. Suffice it to say there was much evidence and legal submissions about the planning history of the site and the Council's attempts to protect the front wall and see its reinstatement following removal.
12. For the avoidance of any doubt, my decisions on these appeals are related solely to the wording contained within the notices. Whether the Council can or will take any

¹ APP/Z0116/E/12/2182489

- other action in respect of the wall or the bin/bike store and screening are not matters on which it would be appropriate for me to comment. My decisions should not be seen as precluding the Council from considering future actions, albeit that they may consider them relevant to their determination.
13. I should also make clear that individual breaches of control in both notices have been drafted in very specific ways which avoid referring to the demolition of the front boundary wall. It would not be right for me to be drawn into considering the appeals in those terms and I shall avoid doing so.
 14. It was put to the Council witness by Mr Turney that they might consider withdrawing the bin/bike store screening requirement from the notices since that had been provided. The appellant had not forewarned the Council that there had been any provision made. It is not disputed by the appellant that at the time the notices were served that the provision had not been installed. There is no challenge to the notices on that basis, whatever the other arguments.
 15. The appellant has demonstrated that she is not opposed to providing storage on the frontage since she has provided some and acknowledges that it provides a better appearance to the frontage. Nonetheless, the details do not tally with the details as approved and contained in drawing DC-10 revision A. It is for the Council to consider its position on the bin and bike store and screening installed. Whether or not the Council approve any revisions later if formally submitted is a matter for them.
 16. I consider that I should also determine initially whether the approved plan referred to in condition 5, drawing 003P shows a wall on the front boundary of the property. To do that I need to refer also to other approved plans.
 17. The existing ground floor plan on drawing 002A shows an elongated narrow rectangle in the position where it is not disputed there was a low wall at the time of the application. The Council witness said that he had scaled the gap on the plan as measuring 1.2m both using a computer programme and a scale rule. This measurement was not disputed by the appellant.
 18. This same rectangle is shown on the proposed floor plan on drawing 003P. In the proposed section F-F on drawing 011 which cuts through that rectangle, the section shows what appears to be a wall with railings on top. I see no other possible explanation which would accord with the evidence. The explanation given by the Council that plan 003P elevation followed an architectural convention not to show details which would obscure a front elevation seems to me to be convincing in circumstances where railings enclosing steps to a basement intervene and are demonstrated as different on the existing elevation which has no railings and proposed front elevation with railings. The details show no alterations to the wall. I am satisfied that a front boundary wall is shown on the proposed ground floor plan on drawing 003P which is the same as the existing plans.
 19. Finally, without reference to the front wall and the grounds of appeal which I shall deal with later, I need to be clear whether the appellant has implemented and completed the scheme that was granted planning permission or has built something different.
 20. The Council has approved non-material minor amendments (NMA) shown on plans No 542.110 and 542.115C by their letter dated 28 January 2015 ref 15/00085/NMA. Those details show mainly alterations to the rear extension. That they do not show the front boundary wall is not significant because these plans seek to address an issue relating to a party wall at the rear. So, although the application form for the NMA says that drawings 011 and 003 will be substituted by

plans 542.115C and 542.110, in reality they should be read alongside those plans. That would tally with the status of a NMA rather than a S73 application to vary the planning permission and the statement in the Council's letter to the effect that the changes do not amount to material changes to the approved plans.

21. As a further complication, the appellant has implemented something which is not quite as the NMA approved plans but the Council does not seek to say that they are materially different in respect of the rear extension. The matter of whether or not there is a separate unit of occupation as a basement flat is also something which it is not put to me by either side as a matter that would be determinative in these appeals.
22. The appellant believes that she has implemented the permission and the Council agrees. I shall adopt the same approach. Furthermore, the appellant has said that the development is more or less completed albeit there were some snagging issues in respect of the basement windows. From the evidence given orally and what I saw on site I consider that the development is to all intents completed albeit that there may be some building issues and interior works which are neither here nor there.

Drafting Corrections

23. I need to consider whether there are any drafting corrections required to the notices that can be done without injustice to any party. It is the duty of an Inspector to make such corrections to ensure that the appeals can be considered on the correct footing, even if one or more of the notices are subsequently quashed or further variations are required on the basis of the evidence submitted on the grounds of appeal. These drafting matters were discussed at the opening of the Inquiry and no objections were raised to any of the drafting corrections that follow.
24. There are some inconsistencies in the way in which the conditions are stated. In EN1 the words *Pre commencement* should be inserted in section 3 above 3. *Further details of screening applied to cycle storage before development starts*. This would then include the same wording as EN2.
25. There was discussion about the position of quotation marks in section 3 of both notices. I have looked at this closely. In EN1 section 3 there should be closing quotation marks after *For the avoidance of doubt*. There should then be opening quotation marks before the inserted words *Precommencement*. In EN2 there should be opening quotation marks before the words *Pre commencement* in section 3. These corrections would serve to distinguish the conditions from the description of the alleged breaches.
26. In EN1 the appropriate time period for immunity from enforcement action referred to in section 4 in respect of a breach of a condition is 10 years not 4 years. There is no assertion by the appellant that the breaches alleged were immune from enforcement action and therefore this alteration can be made without unfairness.
27. Turning now to the requirements in section 5 of each notice, the requirements should accord with the words stated in the relevant breaches. Therefore, the requirements should refer to the *front boundary wall* rather than just to the wall. The list of approved plans in condition 5 does not include the letters and numbers BA 897. Whilst these letters and numbers do occur on the actual plans, to include them when they are not in the condition has the potential to create confusion for the reader. I shall therefore delete those letters and numbers from the requirements in both notices. There is the same reference in EN2 section 3 which I shall also delete.

28. Condition 3 refers to cycle storage. The cycle storage shown in plan form on the approved plan 011 and more latterly as approved in discharging the condition on plan DC-10 Revision A includes space for the provision of bins. On the approved plan it shows "Bin/Bike store" and also screening planting in front of the store. Because of the annotation on the plans, although the requirement refers to bin storage and screening in addition to *cycle storage* referred to in the condition, I shall not change the requirement in those respects.
29. As condition 3 uses the word *shall* rather than the word *should*, I shall amend both the notices where it refers to bike storage/bin storage in the requirements of section 5.

Whether alternative notices can be issued

30. At the Inquiry Mr Ground QC for the Council, who had advised on the drafting of the notices, expressed a preference for EN1. Nonetheless, he considered that both notices detailed legally valid ways of defining the breach of planning control alleged. Both could be used as a platform to achieve a resolution of the matters at issue. It is common ground that they are intended as being in the alternative and one should be quashed if one appeal is dismissed and its relevant notice upheld.
31. Mr Turney, Counsel for the appellant, expressed a preference for neither notice. The appellant says that condition 4 cannot have any legal effect before the planning permission has been implemented and that the development could not be lawfully implemented until condition 3 details had been approved. Mr Turney submitted that if there was no planning permission that could be relied upon in EN2, then there could be no breach of conditions as alleged in EN1. In the same vein, since the Council had relied on the planning permission for EN1, EN2 cannot be correct. He submitted that the notices were hopelessly ambiguous in terms of case law² and uncertain in terms of the breaches of planning control alleged. He asked me to consider quashing them both as nullities from the outset.
32. The main parties agreed that it would not be appropriate for me to give an oral ruling on this matter at the Inquiry. I was asked to consider the issue in my decision. Before continuing to address the grounds of appeal, I shall address that matter here.
33. I have read both notices on their faces. From that reading I am satisfied that each gives a sufficiently full description of the breach of planning control alleged to tell the recipient what the Council's concerns are, and on what that assessment is based. This is not to pre-judge the merits of the grounds of appeal on the legal grounds. The Council has accepted that if I uphold EN1 then EN2 could not stand and vice versa.
34. Mr Ground submitted case law³ which demonstrated the potential for issuing two enforcement notices in respect of the same breach of planning control. I also saw some encouragement in cancelled Government guidance to local authorities⁴ for issuing two notices in the alternative where it is sometimes not clear how the alleged breach of control is most accurately stated. This is a similar circumstance. The Council has already issued and withdrawn a breach of condition notice and a conservation area enforcement notice in respect of some matters concerned in the notices.
35. In contrast, Mr Turney did not provide case law or other documentary evidence that demonstrated that this should not be an approach adopted. The expediency of

² Miller-Mead v Minister of Housing and Local Government [1963] 2 QB 196 [Tab 2] per Upjohn LJ

³ Doc 12

⁴ Doc 11

the Council issuing the two notices is a matter for them and not a matter within my remit to consider as a Planning Inspector. I acknowledge that, as submitted by Mr Turney, the Council has "second bite" opportunities but I see no reason why they cannot do what they have done in the notices which is to try to resolve the same matter by differently couched allegations at the same time. This can only be helpful in expediting a solution one way or the other for all parties concerned.

36. Whether there are grounds for a successful appeal against either of the notices is then a quite separate matter. Also, whether the Council is reasonable in taking the approach, in the terms expressed in Planning Practice Guidance is a matter that I shall consider in the costs applications.

Grounds of appeal

37. Turning now to the grounds of appeal against both notices. The appellant has appealed on ground (b) that the breach of control alleged has not occurred as a matter of fact; ground (c) that the matters stated in the notice which give rise to the alleged breach of planning control if they occurred did not constitute a breach of planning control and ground (f) that the steps required are excessive and lesser steps would overcome the objections. Most of the evidence and submissions centred around whether the Council could take the enforcement action that they had to achieve the requirements of the notices and those are the matters central to my reasoning.
38. As I explained at the Inquiry, there is no ground (a) appeal that planning permission should be granted. I have paid careful attention to the representations for and against the development. Neighbours have written subsequent to the appeal and there was oral evidence from some local residents concerned about the effect of the development on the Conservation Area. I am in no doubt that views are deeply held on all sides.
39. I am conscious that the development is within a conservation area where I heard that the Council is keen to retain front walls. I saw on my site inspection examples of front walls and also of some parking spaces with access where walls had been demolished. I acknowledge that local residents are concerned also about parking issues and are keen to ensure that the character or appearance of the area in which they live is preserved or enhanced in line with the conservation area statutory provision. Nonetheless, as I advised at the Inquiry, whilst I accept that there may be a relevance of the reasons for issuing the notices to the grounds that I am considering, it is not open to me to consider the planning merits of the case as I am considering the appeals on the grounds of appeal made alone.

Reasons

EN1 and EN2 Ground (b) appeals

40. These appeals are on the basis that the matters stated in the breach of planning control have not occurred.
41. Even though I have concluded that the Council can issue two notices at the same time in the alternative, in respect of the ground (b) appeals it is important that I should establish whether the planning permission has been implemented since this is central to the matters contained within appeal representations.
42. The appellant considers that she had implemented the planning permission at the time the notices were served. She submitted the details required by condition 3 before commencing the development. That is agreed by all concerned. Furthermore, although not built quite to the original details, the Council approved

- variations as non-material amendments. The rear of the property is not now much different to those variations.
43. For all these reasons I have concluded that the planning permission has been implemented. It follows therefore the matters at issue should be addressed in relation to whether or not they are breaches of conditions rather than the whole development being in breach of planning control. It follows that I shall therefore quash EN2. I do not therefore need to deal with any further matters in respect of the appeal in respect of that notice.
44. Turning to EN1, I shall deal firstly with the bin store and bike store and screening. Condition 3 requires that no development shall take place until details have been approved by the local planning authority. There is no dispute that there has not been a breach of this part of the condition as the appellant submitted details to the Council which were approved before the start of the development.
45. The second sentence states that the detail hereby approved shall be carried out in accordance with that approval. There is no dispute that at the time EN1 was served the approved detail had not been implemented. The appellant believes that the Council cannot compel her to provide the storage facility and screening that was approved at a particular time because there is no time period for compliance contained within the condition, even though the condition includes the word "shall" from which can be implied that it is mandatory. She relies on case law⁵ and Planning Practice Guidance stating that conditions requiring compliance with plans in entirety will fail the test of necessity.
46. The Council considers that the development is to all intents and purposes completed, and that the details should have been implemented as part of the development. Furthermore, this condition should be read with condition 5 requiring development to conform with the application plans. Thus the Council considers that the breach of control has occurred.
47. The heading of this condition indicates that details were required pre commencement which is consistent with exercising control over what is built. The approved application plans only show the bin bike store in plan form with no elevation details. It was understandable therefore that the Council sought to control details in the interests of the character and appearance of such matters for the reasons stated in the permission.
48. Nonetheless, if the Council had considered that the bin /cycle storage and screening should be provided at a certain time, such as pre-occupation, then that should have been contained within the condition. As the appellant could have implemented the approved details whenever she wished, it follows that the breach of planning control had not taken place by not implementing those approved details before the date of issue of the notice.
49. It follows that there had been no breach of the planning condition at the date the notice was served. Although different details have now been implemented, that is a quite separate matter from these being details implemented at the time the notice was served.
50. I shall correct EN1 to delete this part of the allegation and the relevant requirements. As I intend to correct the notice in respect of condition 3, there is no need for me to consider the appeals on ground (c) or (f) in respect of that matter.
51. Turning now to matters relating to the wall.

⁵ Sevenoaks DC v First Secretary of State [2005] 1 P&CR 13 and Dunnett Investments Ltd v Secretary of State for Communities and Local Government [2016] EWHC 534 (Admin)

52. The appellant argues that condition 4 of the planning permission cannot have any effect because the wall had been taken down before the approval of details pursuant to condition 3 of the permission and that the permission had not been implemented. It was removed before condition 4 had any legal effect. The permission did not relate to any works to the wall. The elevation plan did not show any wall present and the permission could be implemented regardless of whether the wall remained in place at the time. The condition was incapable of preventing the removal of the wall, or its re-instatement. For all these reasons the appellant believes that there is no breach of planning control.
53. It is not disputed that the wall was removed from the frontage on 15 January 2014. The Council says that the condition prevents the removal of the wall as it is shown on the approved plans. The Council says that the permission can bite after the submission of the details submitted pursuant to a condition but before the approval of those details, even though building works could not be implemented lawfully at that time. The Council view is that I should read the planning permission as a whole considering what was applied for, the plans and what the planning permission says.
54. The planning permission is remodelling the existing dwelling to include basement and rear extension. The whole of the property is within the red lined area on plan 001. No part of the proposal was works to the wall. The floor plans show the wall as existing and proposed in the same position. The section plans show a wall.
55. There are works affecting the front of the property. Given that the application is couched in terms of "re-modelling" of the property as a whole and includes work at the front, I conclude that it is correct to consider the retention of the wall as part of the scheme for which planning permission was granted. There is no doubt that the application was considered on that basis by the Council. Because of the planning history, I also have no doubt that had the plans shown the wall to be removed to allow parking on the frontage that the Council would have opposed the development.
56. Furthermore, reading conditions 4 and 5 together it makes sense that the plans should be implemented as shown and then subsequently the wall should not be removed.
57. Planning permissions are not intended to be picked apart forensically. On any reading of the application details, plans and conditions together, the condition requiring that the wall should not be removed *without the express permission in writing of the Council* tells the recipient clearly that this should not be done. To do so would be a breach of the condition. This interpretation is consistent with case law in *Trump and Dunnett*.⁶
58. A condition should not be construed narrowly or strictly. The appellant was well aware of the Council's opposition to the removal of the wall and did not show that or any reduction in its length in her application plans. Since the appellant made the application and so was in control of its contents, believes that she has implemented the planning permission, and was aware of the Council's opposition to the removal of all or part of the wall, it follows that the matters alleged in the notice have taken place, in breach of the conditions since the wall has been removed without the express consent of the Council.

⁶ *Trump International Golf Club Scotland Ltd v Scottish Ministers* [2016] 1 W.L.R. 85 and *Dunnett Investments Ltd v Secretary of State for Communities and Local Government* [2016] EWHC 534 (Admin)

59. To suggest that condition 4 when rightly read with condition 5 can be given no effect and is severable is not supported in Kingsway, since these were not trivial or unimportant issues.⁷

EN1 Ground (c) appeal

60. This is that the matters stated in the notice which give rise to the alleged breach of planning control if they occurred did not constitute a breach of planning control. As previously stated the appellant believes that she has implemented the permission.
61. The appellant has removed the wall and rebuilt it to different details from those shown on the plans. This is development not in accordance with the approved plans contrary to condition 5 and contrary to condition 4 since the wall demolition was carried out without express consent before its replacement with the second wall. There is no express consent in writing for any removal of the wall. The appeal on ground (c) fails.

Ground (f) appeal

62. The requirements of a notice can either remedy the breach or remedy the injury to amenity. Here, the condition prevents the removal of the wall. That has been breached. At the time the planning permission was granted the wall did not have bathstone coping. Nonetheless, the appellant confirmed to the Inquiry that prior to its demolition the wall had bathstone coping. Therefore the requirement seeks to ensure that the wall is reinstated to its condition before the breach took place.
63. It was the appellant's wish to have bathstone coping rather than concrete coping given that she had applied separately for this and installed it. I see no justification to conclude that this would be unreasonable. The appellant's arguments again centre on the belief that the Council cannot require the wall to be re-instated by the method it has chosen. I have not accepted those arguments for the reasons that I have already given.
64. The appellant also opposes the wording *For the avoidance of doubt the reinstated wall shall then be retained and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 or any successor provision no removal or demolition of all or part of the wall shall take place without express planning permission of the Council in writing*. This is on the basis that the notice can only require steps and not impose a planning condition. I accept that this is correct and shall delete this wording. It will then be for the Council to determine whether there has been any future non-compliance with the requirements of the enforcement notice.

Conclusion EN1

65. In respect of EN1, I conclude firstly that the drafting corrections that I identified earlier should be carried out. I then consider that the appeal should succeed on ground (b) to the extent that the reference to condition 3 and the last two paragraphs of paragraph 5 should be deleted. I shall uphold the rest of the notice as corrected and varied.

Conclusion EN2

66. In respect of EN2, I conclude firstly that the drafting corrections that I identified earlier should be carried out with the exception of any concerning the requirements which it is not necessary to alter as I am quashing the notice. I then consider that the appeal should succeed on ground (b) and that the notice should be quashed.

⁷ Kingsway Investments v Kent CC [1971] AC 72

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67. It is directed that the enforcement notice is corrected in the following respects:

- In section 3 insert a closing quotation mark at the end of the Reason for condition 5 *For the avoidance of doubt*.
- Before the quoted condition 3 in section 3 insert a title and opening quotation mark: "Pre commencement.
- In the first paragraph of section 4, replace the words *four years* with the words *ten years*.
- In the requirements in section 5, insert the words *front boundary* before the word wall.
- Delete the reference BA 897 from the requirements in the notice.
- Replace the word *should* with the word shall, where it refers to bike storage/bin storage in the requirements of section 5.

68. It is directed that the notice is varied as follows:

- Delete all the words starting *There is a second breach* at the top of the second page and finishing with the words *has been carried out* above the final paragraph of section 3; and
- Delete the last two paragraphs of section 5.

69. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

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70. It is directed that the enforcement notice is corrected in the following respects:

- In section 3 insert opening quotation marks before the words *Pre commencement*; and
- Delete reference BA 897 in section 3.

71. Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

Julia Gregory

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Turney, of Counsel Appellant	Instructed by the appellant Nicola Walther
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FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground QC	Instructed by the Head of Legal Services, Bristol City Council
Nigel Butler MRTPI	Enforcement Team Leader

INTERESTED PERSONS:

Mike Taylor	Local resident
Bernard Cook	Local resident
Paul Winteringham	Local resident
Tessa Horswell	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1	Notification of Inquiry venue change letter from the Council dated 27 September 2016
2	Signed statement of common ground
3	5 Photographs of bin and bike stores and screening submitted by the appellant
4	Bundle of 5 additional representations from local residents
5	Extract from Planning Practice Guidance Use of Planning Conditions submitted by the main parties
6	Authorities bundle submitted by the main parties
7	Appellant's opening submissions
8	Non-material amendment approval letter dated 28 January 2015 along with application form and plans approved
9	Design and access statement for application 13/01376/H
10	Legal submissions on behalf of Bristol City Council
11	Enforcing Planning Control Good Practice Guide for Local Authorities - cancelled by Planning Practice Guidance on 6 March 2014 submitted by the Council
12	Millen v Secretary of State for the Environment and Maidstone Borough Council submitted for the Council
13	Appellant's closing submissions
14	Appellant's costs application
15	Council's costs claim