



Appeal Decisions

Site visit made on 19 December 2016

by **D E Morden MRTPI**

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

Decision date: 03 January 2017

Appeal A: APP/Y3805/C/16/3153214

23 Brighton Road, Lancing, East Sussex, BN15 8RJ

- 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 P Creasey against an enforcement notice issued by Adur District Council.
- The enforcement notice, reference AWEN/0063/16/ENF, is dated 27 May 2016.
- The breach of planning control as alleged in the notice is the laying of a hard-standing and the erection of 3 outbuildings.
- The requirements of the notice are to cease the use of the hard-standing for car parking and either remove the hard-standing and outbuildings in their entirety from the land and permanently remove all material resulting from compliance with this requirement or, revert the use of the hard-standing and outbuildings to a use which is ancillary to the residential use of 23 Brighton Road.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in part following correction and variation of the Notice which is upheld as set out in the Formal Decision at paragraphs 34-35 below. Planning permission is granted in part on the deemed application.

Appeal B: APP/Y3805/C/16/3153220

23 Brighton Road, Lancing, East Sussex, BN15 8RJ

- 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 P Creasey against an enforcement notice issued by Adur District Council.
- The enforcement notice, reference AWEN/0063/16/ENF, is dated 27 May 2016.
- The breach of planning control as alleged in the notice is the change of use of the land from residential to a mixed use of residential dwelling and use in connection with a residential care home due to the change of use of the land edged blue on the Notice plan.
- The requirements of the notice are to (i) permanently cease the use of the land shown edged blue in connection with the Drumconner Residential Care Home; (ii) permanently re-instate the use of all of the land shown edged red on Plan 1 as a single dwelling house and (ii) reinstate boundary fence, permanently filling in the opening created between Drumconner Residential Care Home and 23 Brighton Road with fencing to match what is currently in situ on the boundary.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in part following correction and variation of the Notice which is upheld as set out in the Formal Decision at paragraphs 36-37 below. Planning permission is granted in part on the deemed application.

Preliminary Matters

1. The operations notice (Appeal A) related to three buildings and it was established at the site visit that one was a very old shed that had been in the garden of number 23 for many years and was used by the occupier when all of the land was just a house and garden. Following correspondence with the parties after the site visit the Council confirmed in writing that it had no objection to the shed being deleted from the allegation in the Notice (and consequently from the requirement to demolish it). I shall, therefore, make that correction as there would be no injustice to any party in doing so.
2. There was also correspondence concerning the use Notice (Appeal B) and a photograph submitted by the Council (taken in April 2016) showed no dividing fence between number 23 and the rest of the land forming part of the care home; nor was the property rented out as a separate dwelling at that time. In those circumstances it is perfectly understandable why the Council issued the Notice with the allegation of a mixed use and outlined in blue the land that it did on the Notice plan.
3. The land actually involved is a lesser area than the blue land originally shown. The parties agreed that what is on site is a separate planning unit containing the house and garden with the remainder of the land being taken into the residential care home planning unit and this was probably the situation soon after the Council's photograph was taken. In my view the allegation in the Notice should reflect that situation rather than allege a mixed use of all of the land. Whilst all the land is owned by one individual there is no reason why it should not be made up of two separate planning units with different uses.
4. The objections raised by the Council concerned the living conditions of the occupants of number 23 as well as others nearby and that would not change if I corrected the Notice. There would be no injustice to any party in those circumstances if that change were to be made (the alternative would be to quash this Notice and start again) so I shall make that correction and deal with the appeal on the basis of the corrected Notice. There will also be consequent variations to the requirements which were based on the land as it existed (physically undivided) and on a notice alleging a mixed use of a larger area of land.

The appeals on Ground (a) – both appeals

Main Issues

5. I consider that the main issue in both these appeals, having regard to the relevant policies of the adopted Development Plan, is whether the developments are materially harmful to the living conditions of nearby residential occupiers, in particular, the occupiers of number 23 Brighton Road.

Reasoning

6. All the land (both that the subject of the change of use notice and that still forming a rear garden for number 23) was previously the approximately 30m long rear garden of number 23 with the care home use taking place immediately to the west of the rear part of the side boundary fence. Number 21 to the west has virtually no rear garden; is currently occupied by the manager of the care home and is part of that care home use.

7. Number 23 has been left with an L-shaped rear garden, the longer part extending about 18m from the back of the property for half its width (of about 6m). The remaining (western) half is about 6m deep and is occupied by the wooden decking to the rear of the house (although the decking does extend for that depth across the full width of the house). Between the decking and the rear boundary fence on the eastern half is an area of grass (imitation grass) and 2m high close boarded fencing has been erected along the northern (furthest) boundary from the house. It has also been erected to form the western boundary of the extended length of garden with a rear access gate giving access to the care home site. The end wall of one of the unauthorised buildings forms the northern boundary of the shorter piece of garden.
8. Dealing first with the operations notice, I acknowledge that number 23 has a rear garden area in excess of the Council's adopted 100sq m standard but whether that is sufficient to provide a reasonable private amenity area is also a matter of location and what uses adjoin it. In this instance the large storage shed virtually intrudes into half the rear garden (even allowing for the fact that that is half the length it used to be) and sits only about 6m from the rear wall of the house and patio doors and indeed its rear wall forms the boundary at the edge of the raised decking.
9. The unauthorised building is about 2.4m tall and in my view has a very overbearing effect on the occupants of number 23 being located adjacent to the rear decking area and so close to the rear elevation and ground floor windows and patio doors. I acknowledge that it could be painted a much lighter colour (rather than be left in the darkish green that it now is) but that would make little difference to the very enclosing, obtrusive feeling that one gets standing on that rear decking area.
10. The other new building is close to the northern boundary of the appeal site and only just visible from the rear of number 23 or from within its garden. In my view it is far enough away for a storage use to not cause any problems for the occupiers of number 23. The adjoining houses to the east of 23 are even further away and also those in Lancing Park to the north would not, in my view, be detrimentally affected by the appearance of the building or a storage use.
11. Turning to the use notice, three parking spaces are provided on the gravelled area to the north of the new boundary fence with number 23. They are more likely to be used by staff as they are around the back and away from the entrance to the care home. I consider that they are sufficiently distant from any properties to not cause a nuisance or have a materially detrimental effect on the living conditions of any of those adjoining occupiers. There may be some minimal noise impact for the occupiers of number 25 when they are in that part of their rear garden but it would be over 20m from the rear of the house and main sitting out area. In my view, it would not cause unacceptable disturbance sufficient to justify refusing this parking area for three vehicles.
12. The appellant claimed that the buildings were only used for storage and it was a low key use, storing specialist beds, furniture and other equipment required by the home. At my visit I found that was generally the case with the very old shed (which had no door) and the building immediately adjoining it although there was at least as much area given over to what appeared to be leftovers from various building works (e.g., bits of carpet and floorboards) and maintenance equipment/tools.

13. That was not the case, however, with the large building adjoining the rear garden of number 23. That building is divided into three sections. The small section closest to 23 has some old furniture and pictures in it as well as some bags and a sewing machine but it is also used to store alcohol that is used in the care home restaurant. Whilst not a large area and kept on three shelves and the floor it would not be likely to be a low intensity use. The front (third) section of the building is accessed by a door at the northern end (far end from number 23). It appeared to be a store for maintenance equipment and tools rather than unused furniture and other equipment used in the care home.
14. The middle, large, section of the building is basically a mess room for all the workers at the home. It has a large fridge, a microwave, toaster and electric kettle as well as a double width sink unit supplied with hot water from a small boiler above it. There was a table with four chairs around it. I was told it was where staff go to eat their meals and they use it during breaks. The doors to these first two sections of the building are immediately outside the rear gate on number 23 and alongside the 'grass' area adjoining the decking.
15. Far from being a low intensity storage use I consider that the use of this building, bearing in mind its proximity to number 23, results in an unacceptable loss of amenity through noise disturbance due to the comings and goings of people, particularly to and from the middle section and the activities that are carried on whilst they are there.
16. The other two buildings are close to the northern boundary of the care home site and their use for storage would not, in my view, cause any unacceptable disturbance to the residents of number 23 and 25 or to the occupiers of the properties fronting Lancing Park to the north of the appeal site.

Conclusion

17. Taking all these factors into account I conclude that the large building closest to number 23 is materially harmful to the living conditions of the adjoining occupiers, it conflicts with Policy AH7(a) – overbearing effect on adjoining occupiers – of the adopted Adur District Local Plan 1996 and should not be permitted. Its use is also unacceptable due to the impact through noise and disturbance it has and/or is likely to have on the occupiers of number 23. The other building and the car parking spaces are acceptable as is their use (for storage and parking respectively). I will therefore make a split decision on both notices allowing those parts which are acceptable and granting planning permission for them and upholding the notices regarding those elements which are not acceptable.

The appeals on Ground (g) – both appeals

18. This ground remains to be determined in respect of Building B (the large building close to number 23) both on Appeal A (the operations notice) and Appeal B (the use notice). The period for compliance on both notices is two months. The appellant stated that the requirements could not be completed within the two months specified claiming it would take longer than that to sort out reinstating the boundary fence to match that existing.
19. The requirements, in essence, have changed bearing in mind my decisions on the ground (a) appeals although I will not vary or remove them. To do so would result in the possibility of granting two inconsistent permissions, one

under s173(11) of the 1990 Act and the other under s177(5). Instead I will rely on s180 of the Act overruling the effect of the confirmed Notice where necessary.

20. The operations notice is now only concerned with the land edged and hatched black on Plan 1 attached to this decision. A 2 metre high fence exists around the L-shaped garden of 23 (although not between building B and the rear of the decking area). Bearing in mind the partial permission I have granted the requirement will now state as follows:- Either, remove building B from the land edged and cross hatched black on Plan 1 and remove all materials resulting from compliance with this requirement from that land, or, use the building only for purposes incidental to the enjoyment of the dwelling house as such at 23 Brighton Road, Lancing.
21. The use notice is now only concerned with the land edged and hatched black on Plan 2 attached to this decision. Bearing in mind the partial permission I have granted the requirements will now state as follows:- (1) Cease the use of the land edged and cross hatched black on Plan 2 for any purposes ancillary to or in connection with the use of Drumconner Residential Care Home and either, remove building B from the land edged and cross hatched black on Plan 2 and remove all materials resulting from compliance with this requirement from that land, or, use the building only for purposes incidental to the enjoyment of the dwelling house as such at 23 Brighton Road, Lancing; (2) Reinstate a 2m high boundary fence between the land hatched black and the land cross hatched black on Plan 2 but ensuring access to the whole building from number 23.
22. The land cross hatched black is slightly larger on Plan 2 so as to allow for the occupier of number 23 to gain access to the northern part of Building B if the appellant decides to leave it on site rather than remove it. Whilst it is not usual to have an either/or situation set out in the notice requirements I consider that can be done in this case without leaving them open to the criticism that they are not precise. In this instance the appellant can choose to remove building B and return the land upon which it stands to the curtilage of 23 Brighton Road, in which case the recently erected fence forming the northern boundary of number 23 should be continued across to number 21.
23. In the alternative the appellant can leave building B where it is but still return it as well as the land to number 23 for the occupier of that property to use for some purpose incidental to the enjoyment of that dwelling house as such (or the occupiers could remove it if it is not required by them). In that case the fence running down the side of building B should be removed and the recently erected fence on the northern boundary should be extended across to number 21 so that the building lies within the fenced boundary of number 23. The fence, in that case, would need to step out on to the blue land (see the cross hatched area on Plan 2) to allow access to all parts of the building for the occupants of number 23. There is therefore no conflict in the fact that the area of land cross hatched on Plan 2 extends slightly further than that on Plan 1 as it deals with the use rather than just the operational development.
24. Whichever course of action the appellant decides to undertake I acknowledge that he will need to make alternative arrangements for the uses that are taking place in building B and that two months is not really sufficient to accomplish that. There is restricted land on the site for any more buildings and if the uses are to be taken within the main building that would also require some time for

working out how to accomplish that. In these circumstances I consider that 6 months is a more reasonable time period and will allow the appellant to make alternative arrangements. To that very limited extent the appeals succeed and I will vary the requirement on both notices which will be confirmed.

Planning Conditions

25. The Council suggested a number of conditions should the appeal be allowed and it is necessary to consider what conditions if any need to be attached to that part of the development on which permission is being granted. The partial permissions granted allow ultimately, in the operational development notice, for the retention of the hard standing area and Building A and in the use notice for the use of the hard standing for car parking and building A for storage.
26. The Council suggested five conditions in total with one mainly applicable to the permission granted for the operational development and the other four to the use notice. For the avoidance of any doubt I shall attach all the conditions (bar the one for the temporary period) to both permissions granted. Dealing firstly with the operational development notice the Council stated that the permission for building A should be for a limited period of 2 years. The appellant did not object to this and in the representations it was stated that the Care Home was undergoing improvements and a major extension so the extra storage was needed temporarily and the need would be reduced once this other work was completed.
27. Whilst I have determined that the location is unlikely to cause a material nuisance to those surrounding the location of building A, the structure is very temporary in nature and its appearance is likely to quickly deteriorate. It is also possible that either this storage building is no longer needed once the major works have been undertaken or that a better location is found. In these circumstances I agree that a temporary permission for two years would be appropriate.
28. Turning to the use notice and the partial permission granted, the appellant did not object to a condition requiring any outdoor lighting to be submitted for approval and bearing in mind the location of the hatched land (to the rear of nearby residential properties) I consider that such a condition is justified.
29. A condition was suggested by the Council limiting the use of building A to storage ancillary to Drumconner Care Home and no other purpose and the appellant has no objection to that reasonable restriction. The second part of the condition tried to restrict access to the storage to 0800 to 1800 hours Monday to Friday only and at no time at all at weekends or on Bank Holidays.
30. Building A is a reasonable distance from any residential property and access to what is just a storage building of currently unused furniture and equipment would not by its nature be something that would require regular access. I am also aware that it could only sensibly be limited to storage use ancillary to the Care Home use and it is possible that it could be used, therefore, for storing anything; it would be impossible to try to restrict what was stored there. Access to it could, therefore, be a much more frequent occurrence over the two year temporary period.
31. I consider it would be appropriate to limit to some extent the hours of access and the Care Home should arrange its storage on the site and the buildings so

that items that could be required in emergency circumstances are not stored in this particular building. In my view it would be reasonable to then limit access to between 0800 and 2000 hours on any day of the year. I do not consider that would result in any significant nuisance to those surrounding the property.

32. The other two suggested conditions refer to the car parking area on the new hard standing; one concerning its use and the other concerning the hours it can be used. The Council suggested no deliveries, loading or unloading should take place on the hard-standing and that is justified as it is located at the back near the residential gardens of surrounding properties. In my view the hours and use are connected. The Council suggested use by both visitors and staff and hours restricted to 0800 to 1800 hours Monday to Friday only and at no time at all on weekends and bank holidays.
33. In the representations the appellant stated that the spaces were more likely to be used by staff as they were at the rear. It was also stated that staff would generate less movements as visitors only tended to stay a few hours whereas staff stayed for a shift. In these circumstances I consider that no time limit is necessary provided that the spaces are only used by staff and this can be easily managed on site for example by signage and/or physically restricting access to those with a pass of some kind.

Formal Decisions

Appeal A - APP/Y3805/C/16/3153214

34. I direct that the enforcement notice be corrected as follows:-

- i) Delete the last two lines in paragraph 2 and substitute therefor the following 'for identification purposes only edged, hatched and cross hatched black on Plan 1 attached to this decision.';
- ii) Delete the number '3' both in line two of paragraph 3 and line 3 of paragraph 4 and substitute therefor the number '2' in each case;
- iii) Delete the words after the word 'only,' in paragraph 3 and substitute therefor the words 'coloured red and marked A and B (the Outbuildings) and shaded blue and marked C (the Hard-standing) on Plan 1 attached to this decision.'

Subject thereto I allow the appeal insofar as it relates to the land edged and hatched black on Plan 1 attached to this decision 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 laying of a hard-standing (shaded blue and marked C) and the erection of the outbuilding coloured red and marked A subject to the following conditions:

- 1) This permission shall be for a temporary period of 2 years from the date of this decision. At the end of that two year period building A shall be dismantled and removed from the land hatched black.
- 2) No floodlighting or any other external means of lighting shall be installed on the land edged and hatched black or on either of the buildings standing thereon without the prior permission of the local planning authority. Such permission shall follow the submission of a detailed scheme which shall be approved in writing by the local planning authority. The lighting scheme shall be carried out in accordance with the approved details.

- 3) The two buildings on the land hatched black shall be used only for storage purposes ancillary to the use of Drumconner Care Home and for no other purpose whatsoever. Access to the buildings shall only take place between 0800 and 2000 hours on any day.
- 4) The hard-standing area (shown shaded blue on Plan 1) shall be used only for the parking of Drumconner Care Home staff vehicles whilst their owners/drivers are on duty; it shall not be used for parking by any other vehicles and shall not be used for any deliveries, loading or unloading and it shall not be used for any outside storage.
- 5) Unless within 2 months of the date of this decision a scheme for limiting the use of the shaded blue area of hard-standing on Plan 1 for the parking of vehicles of 'on duty staff' only (as set out in condition 4 above) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's written approval, the use of the land shaded blue for the parking of vehicles shall cease until such time as the scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 4 months of the date of this decision, the use of the blue shaded land for the parking of vehicles shall cease until such time as a scheme approved by the local planning authority is implemented.

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

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.

35. I also direct that the enforcement notice be varied as follows:-

- a) Delete all the words in paragraph 5 other than the last line and substitute therefor the words 'Either: Remove the Hard-standing (marked C) and the Outbuildings (marked A and B on Plan 1 attached to this Decision) in their entirety from the land including all materials resulting from compliance with the first part of this requirement. Or: Revert to No. 23 Brighton Road, Lancing, the land edged, hatched and cross hatched black on Plan 1 and any operational development thereon.'
- b) Substitute '6 months' for '2 months' in the last line of paragraph 5.

Subject thereto I dismiss the appeal and the enforcement notice as corrected and varied is upheld insofar as it relates to the land cross hatched black on Plan 1 attached to this decision and planning permission is refused in respect of the erection of building B thereon on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B - APP/Y3805/C/16/3153220

36. I direct that the enforcement notice is corrected as follows:-

- i) Delete the words in line 2 of paragraph 2 and substitute therefor 'edged, hatched and cross hatched black on Plan 2 attached to this Decision for identification purposes only.';

- ii) Delete all the words after 'Land' in line 2 of paragraph 3 and substitute therefor 'from residential to use in connection with the Drumconner Care Home.';

Subject thereto I allow the appeal insofar as it relates to the land shown hatched black on Plan 2 attached to this decision 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 use of the land hatched black on Plan 2 for purposes ancillary or incidental to the Drumconner Care Home subject to the following conditions:

- 1) No floodlighting or any other external means of lighting shall be installed on the land edged and hatched black or on either of the buildings standing thereon without the prior permission of the local planning authority. Such permission shall follow the submission of a detailed scheme which shall be approved in writing by the local planning authority. The lighting scheme shall be carried out in accordance with the approved details.
- 2) The two buildings on the land hatched black shall be used only for storage purposes ancillary to the use of Drumconner Care Home and for no other purpose whatsoever. Access to the buildings shall only take place between 0800 and 2000 hours on any day.
- 3) The hard-standing area (shown shaded blue on Plan 1) shall be used only for the parking of Drumconner Care Home staff vehicles whilst they are on duty; it shall not be used for parking by any other vehicles and shall not be used for any deliveries, loading or unloading and it shall not be used for any outside storage.
- 4) Unless within 2 months of the date of this decision a scheme for limiting the use of the shaded blue area of hard-standing on Plan 1 for the parking of vehicles of 'on duty staff' only (as set out in condition 4 above) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's written approval, the use of the land shaded blue for the parking of vehicles shall cease until such time as the scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 4 months of the date of this decision, the use of the blue shaded land for the parking of vehicles shall cease until such time as a scheme approved by the local planning authority is implemented.

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

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.

37. I also direct that the enforcement notice be varied as follows:

- a) Delete the words in paragraph 5(i) and substitute therefor 'Cease the use of the land shown edged, hatched and cross hatched black on Plan 2 attached to this decision for use in connection with Drumconner Care Home.';

- b) Delete the words in paragraph 5(ii) and substitute therefor 'Re-instate the use of all the land shown edged, hatched and cross hatched black on Plan 2 attached to this Decision for purposes incidental to the enjoyment of the dwelling house at 23 Brighton Road, Lancing.';
- c) Delete the words in paragraph 5(iii) and substitute therefor 'Continue a 2m high solid fence across the northern side of the cross hatched land from the existing fence forming the rear boundary of 23 Brighton Road to the boundary with number 21 Brighton Road.';
- d) Substitute '6 months' for '2 months' in the last line of paragraph 5.

Subject thereto I dismiss the appeal and the enforcement notice is upheld as corrected and varied insofar as it relates to the land shown edged and cross hatched black on Plan 2 attached to this decision for use in connection with Drumconner Care Home, and planning permission is refused in respect of the change of use of the land edged and cross hatched in black for use in connection with Drumconner Care Home on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D E Morden

INSPECTOR



Plan 1

This is the plan referred to in my decision dated: 03 January 2017

by **D E Morden MRTPI**

Land at 23 Brighton Road, Lancing, East Sussex, BN15 8RJ

Reference: APP/Y3805/C/16/3153214

Scale: Not to scale





Plan 2

This is the plan referred to in my decision dated: 03 January 2017

by **D E Morden MRTPI**

Land at 23 Brighton Road, Lancing, East Sussex, BN15 8RJ

Reference: APP/Y3805/C/16/3153220

Scale: Not to scale

