

Appeal Decision

Site visit made on 23 January 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 1 February 2017

Appeal Ref: APP/Q1445/C/16/3152290

73 Church Road, Hove BN3 2BB

- 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 Colum Smith (McMillan Williams Solicitors) against an enforcement notice issued by Brighton and Hove City Council.
 - The enforcement notice, reference 2015/0300 was issued on 3 May 2016.
 - The breach of planning control as alleged in the notice is: the removal of the rear boundary wall, installation of gates and associated earthworks and construction of a hardstanding and rendered walls in the garden.
 - The requirements of the notice are as follows:
 - Remove gates on rear boundary
 - Reinstate rear historic boundary wall
 - Remove rendered walls and concrete hardstanding in the rear garden.
 - The period for compliance with the requirements is 6 (six) months.
 - The appeal is proceeding on grounds (a), (c), and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed (see formal decision below).

Matter of clarification and background information

2. The appellant indicates that the allegation in the notice is inaccurate, in that only part (and not the whole) of the rear wall has been removed in order to facilitate the insertion of gates. I noted that this was the case and will correct the notice accordingly in accordance with the powers transferred to me. I am satisfied that this will not cause any injustice to the Appellant or to the Council.
 3. The appeal property lies on the northern side of Church Road and to the south of the residential care development, Harewood Court. The partly demolished wall is part of the historic brick wall which forms the boundary between Harewood Court and the terraced properties along this part of Church Road. The properties lie within The Avenues Conservation Area (ACA). The ACA was designated in 1985 (extended in 1989) and is based upon a street layout by Sir James Knowles.
 4. Most of the buildings date back to a period between 1871 and 1883, with a later phase of building between 1894 and 1901. The ACA includes a variety of styles but it is mainly characterised by 3 and 4 storey terraced or semi-detached properties of yellow or red brick with slate roofs. The terraced appeal property like others in the terrace has a rear yard area between the back of the main building and the boundary. The works carried out include part demolition of the wall; the installation of wrought iron gates and a sloping hardstanding with short capped walls leading into the main rear area. At the time of my visit the gates were blocked and covered and large boulders had been positioned on the
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Harewood Court side of the boundary. However, I was able to see over the wall into the rear area and I am clear about the works carried out.

5. In March 1991 an Article 4 Direction (the Direction) was approved and this affected all of the properties within the ACA. Certain works, which would have been permitted development under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995), became subject to the need for a planning application to be made. The Direction indicated that, amongst other things, building a hardstanding (item (v) PART I) and the erection or alteration of gates, fences or walls (item (i) in PART 2) now need planning consent on all property.

6. The Brighton and Hove Supplementary Planning Document (SPD), at SPD09, indicates that *'in conservation areas, permission will not be granted for the demolition or partial demolition of a boundary wall. Alterations to boundary walls will only be acceptable where original patterns, materials and details appropriate to the property are proposed'*. The National Planning Policy Framework (NPPF) is also a major material consideration and particularly sections 7 (Requiring good design) and 12 (Conserving and enhancing the historic environment). Relevant parts of Planning Practice Guidance (PPG) are also relevant.

7. Because the appeal property lies within the ACA, in reaching my conclusions in this case, I have paid special attention to the requirements of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

The appeal on ground (c)

8. Initially the Appellant was unaware of the details of the Direction. However, it has since been accepted that the alterations to the wall and the insertion of gates does require planning permission. This part of the ground (c) appeal was, therefore, withdrawn.

9. However, it is argued that the Direction was approved in 1991 and that the rights, by which the hardstanding works are now afforded, lies within Class E of Part 7 of Schedule 2 of the GPDO, which is a new permitted development right introduced in 2015. This relates to *'hard surfaces for professional services establishment (A2)'*. It is also indicated that the back yard area to the property has always been paved (that is, a hardstanding) and this infers that the Appellant is of the view that it is immune from enforcement action.

10. In relation to the first part of the Appellant's argument, when a Direction is confirmed it can remain in place permanently once it has been confirmed (PPG paragraph 049 Reference ID: 13-049-2014036). PPG advises that LPAs should regularly monitor any Direction to ensure that the original reasons it was made remain valid. Unless a Direction is cancelled by a LPA (through the appropriate procedures) it remains in place. When changes or additions are made to the GPDO, these are still subject to a Direction which is still in place.

11. In this case, therefore, even though Class E of Part 7 of Schedule 2 of the GPDO, Class E of Part 7 of Schedule 2 of the GPDO, gives a permitted development right to provide a hardstanding in relation to an A2 use, the works carried out cannot benefit from this provision. The Direction is quite specific in referring to the building of a hardstanding (item (v) PART I) as well as to the erection or alteration of gates, fences or walls (item (i) in PART 2). Furthermore, it also indicates that this applies to all (my underlining) properties.

12. Whilst acknowledging that the rear yard might well have always been paved it is evident that a new area of hardstanding works (plus low capped walls) has been

carried out. This has, in my view, materially affected the appearance to the rear of the property and I consider that planning permission is required for this part of the works. The hardstanding is not exempt from enforcement action.

13. It follows, therefore, that in the absence of any permission (express or permitted under the GPDO) a breach of planning control has occurred and the appeal under ground (c) must fail.

The appeal on ground (a)

14. The main issue is the effect of the various works as carried out on the character and appearance of this part of The Avenues Conservation Area. I have dealt with the different elements of the works separately.

Removal of part of the wall, the insertion of gates and associated earthworks

15. The brick wall is a significant feature which forms the rear boundaries between the terraced properties along this part of Church Road and Harewood Court. It is an attractive wall which has clearly been in place for some considerable time and in some places planting softens the overall visual effect.

16. In my view the demolition of part of the wall and the introduction of the wrought iron gates has resulted in an obtrusive and visually harmful effect in this part of the conservation area. The gates are higher than the wall and appear as out-of-scale and alien when seen against the rest of the wall. I consider that the works as carried out are very poorly designed and neither preserve nor enhance this part of the conservation area.

17. In conclusion on this part of the works I find that the opening and the gates are contrary to the Council's SPD. I also find them contrary to sections 7 and 12 of the NPPF in that the works are of poor design and fail to conserve or enhance the historic environment. The works fails to take the opportunities available for improving the character and quality of the area and the way it functions and are harmful to the ACA. Even if the works were considered to be 'less than substantial' there are no public benefits which outweigh the harm caused.

18. Furthermore, and irrespective of land ownership matters, if permission is granted in this case it would set a most unfortunate precedent in this part of the ACA. The appeal, therefore, fails on ground (a) in relation to this part of the works.

Construction of a hardstanding and rendered walls in the rear garden

19. It is evident that the rear yard has been a hardstanding area for some considerable time. Closer to the building the paved areas were visible from the boundary. However, the new works (section of ramped hardstanding) has clearly been carried out to allow a vehicular access to the rear yard. In turn the rendered walls have been built to contain the ramped/sloping hardstanding.

20. Having seen the new area of sloping hardstanding and the low rendered walls, and again putting aside the question of the right of access via Harewood Court, I consider that this part of the unauthorised development also looks alien and obtrusive. Most of the other rear areas which bound the brick wall appear to be simple yards or gardens to the respective properties. The appeal property has ended up looking like what it was intended to be; a car park to the rear of No 73.

21. Due to this I consider that this rear area has been completely changed in terms of its character and appearance. The ramped and walled hardstanding (or access) is, in my view equally as visually harmful to the ACA, the character and

appearance of which is neither preserved nor enhanced by the works. The Council has made it clear that planning permission would not have been granted if an application had been made and there can be no justification in granting permission at this appeal stage. The appeal also fails, therefore, on ground (a) in relation to this inappropriate and harmful operational development.

The appeal on ground (f)

22. The appellant's arguments under this ground are based upon the contention that planning permission is not required for most of the development carried out on the basis that it constituted permitted development. However, I have dealt with those matters under the ground (c) appeal above, in that planning permission would be required for all of the works carried out. Under this ground (f) appeal, the only question remaining is whether or not the steps required are excessive and whether lesser steps would overcome the objections.

23. Having identified the harm caused by the breach of control and having seen the different elements of the works carried out, I do not consider that the steps as required are excessive. If the gates are removed; the wall replaced and the hardstanding and rendered walls are removed then the breach would be remedied and character and appearance of the PPCA would be preserved. There are no lesser steps in my view which would suffice to overcome the harm caused. The appeal also fails, therefore on ground (f).

Other Matters

24. I have taken into account the letter (dated 11 July 2016) from the Royal Masonic Benevolent Institution (RMBI) which, through RMBI Care, is the freehold owner of Harewood Court. It is indicated that the Appellant has '*knocked down part of the boundary wall and erected a set of wrought iron gates*'. It is also stated that that the works were carried out without their agreement; that the gates open on to a one-way driveway around the building; that the remaining sections of wall are now leaning; that to allow the gates would set a precedent and that it is considered that there has been a breach of the Party Wall Act 1996.

25. Whilst understanding the RMBI concerns and that they are aggrieved by the Appellant's actions, this is a civil matter between the parties relating to land ownership. The only relevant point in terms of a material consideration in this case is the reference to a precedent being set.

26. In reaching my conclusions, I have taken into account all of the other matters raised by the Council and by the Appellant. These include the initial grounds of appeal; the respective statements and the final comments. However, none of these factors alters any of my conclusions on the grounds of appeal and nor is any other matter of such significance so as to change my decision.

Formal Decision

27. I direct that the enforcement notice be corrected by adding the words '*part of*' after the words '*removal of*' and before the words '*rear boundary wall*' in part 3 of the notice (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL).

28. The appeal is dismissed, the enforcement notice is upheld as corrected and the application deemed to have been made under s177 (5) of the Act is refused.

Anthony J Wharton

Inspector