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## Appeal Decisions

Site visit made on 24 November 2020

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 December 2020**

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**Appeal Ref: APP/Q1445/C/20/3253345 & APP/Q1445/C/20/3253346  
9 Findon Close, Hove BN3 8GZ**

- The appeals are 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 Girgis Filmon and Ms Rania Salama against an enforcement notice issued by Brighton & Hove City Council.
  - The enforcement notice was issued on 14 April 2020.
  - The breach of planning control as alleged in the notice is without planning permission the construction of a rear extension.
  - The requirements of the notice are:
    1. Decrease the depth of the rear extension to comply with drawings 01, 14, 15, 16 and 19 of the planning approval BH2019/02100 and remove all resultant debris and materials from the site.
    - OR
    2. Completely remove the rear extension and all associated works, debris and materials from the rear of the host property, 9 Findon Close, Hove and return the land to its former condition and character.
  - The period for compliance with the requirements is seven months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b) 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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### Decision

1. It is directed that the enforcement notice is:
  - corrected by deleting the final two words of the second requirement of the notice, under section 5 (What you are required to do), which states "and character".
2. Subject to this correction, the appeals are dismissed, and the enforcement notice is upheld.

### Procedural Matters

3. The Appeals have only been lodged under ground (b). However, it is clear from the substance of their appeal submissions that the appellants are also seeking to appeal under ground (c), in so far as they consider that the construction of a rear extension, of up to 6.5m in depth has the benefit of planning consent. It is also argued that a garden shed/workshop has been rebuilt over the footprint of a previous garden shed/workshop that was demolished and that planning permission is not required for this or an outdoor kitchen. As the Council have

provided detailed comments on the appellants' statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

4. The final two words of the second requirement of the notice, under section 5 (What you are required to do), which states "and character" is imprecise unnecessary. The second requirement already clearly outlines that the land shall be restored to its previous condition to remedy the breach. My understanding of the notice is not affected by this, and nothing within the appellants' submissions indicates to me that it has been misunderstood by them as a result. It is necessary however to correct the requirement to remove these unnecessary words but retaining the effect of what the Council is trying to achieve. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
5. Arguments relating to the planning merits of the development that has been undertaken can only be taken into consideration in an appeal made on ground (a). Since there is no ground (a) appeal I cannot take into account the planning merits of the development put forward by the appellants in their submissions.

### **The appeal on ground (b)**

6. To succeed on this ground, the onus is upon the appellants to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. This has not been demonstrated. On the contrary, the appellant confirms in their appeal form and in their appeal statement that there has been the construction of a rear extension but contends that this has planning permission. As outlined above this is more an appeal under ground (c), which is considered below. Since the appellants accept that the recent development of a rear extension has occurred, on the balance of probabilities I consider that the matters as alleged by the notice have occurred as a matter of fact.
7. Accordingly, the appeals on ground (b) must fail.

### **The appeal on ground (c)**

8. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts in this appeal rests with the appellants, and the test of the evidence is the balance of probability.
9. Under this ground of appeal, it is contended that there has been no breach of planning control since the construction of a rear extension, of up to 6.5m in depth has the benefit of planning consent. However, no further evidence has been submitted in support of the appellants' claim that planning permission exists for a 6.5m deep extension. On the contrary, the Council states that the appeal site benefits from a 2019 planning permission for a single storey rear extension with a depth of 6m<sup>1</sup> and details of this approved scheme have been provided.
10. The appellants also contest that planning permission is not required for the outdoor kitchen and the reconstruction of a garden shed/workshop over the footprint of a previous garden shed/workshop. The single storey rear extension

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<sup>1</sup> Council ref: BH2019/02100 granted on 19 September 2019.

is physically attached the outdoor kitchen which is physically attached to the garden shed/workshop. The entire structure is all contained beneath one conjoined roof, which far exceeds the 6m deep rear extension permitted under 2019 planning permission referred to above. In my view, the development is a single building operation and thus amounts to a single enlargement for which planning permission is required. It is not appropriate to treat each part of the rear extension as if it were three were separate developments as suggested by the appellants, and I am therefore satisfied that the notice describes the allegation correctly.

11. There is no dispute that something existed prior to the current extension before me. However, as that previous structure was demolished it has no bearing on my determination of this appeal under ground (c).
12. Planning permission is required for the rear extension. There is none in place. Therefore, based on all the evidence before me, there has been a breach of planning control and the appellants have not discharged the onus on them to demonstrate otherwise.
13. Accordingly, the appeals fail on ground (c).

### **Conclusion**

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

*R Satheesan*

INSPECTOR