
Appeal Decisions

Site visit made on 6 April 2022

by Sandra Prail MBE, M.B.A., LLB (Hons), Solicitor (non practising)

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

Decision date: 26 April 2022

Appeal A Ref: APP/ Q1445/C/21/3284744

93 St Leonards Road Hove, BN3 4QQ

- Appeal A is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Brighton & Hove City Council.
- The appeal is made by Tony Camps-Linney.
- The notice (Notice A) was issued on 22 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the construction of a car port on the land.
- The requirements of Notice A are to remove the portion of the car port structure as shown in red in Appendix A attached to Notice A.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: Appeal A succeeds in part and the enforcement notice is upheld and varied in the terms set out in the Formal Decision

Appeal B Ref: APP/Q1445/C/21/3284745

- Appeal B is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Brighton & Hove City Council.
- The appeal is made by Tony Camps-Linney.
- The notice (Notice B) was issued on 22 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of a one bedroom flat situated on the first floor to two studios.
- The requirements of Notice B are to cease the use of first floor flat as two studios.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal is dismissed and the enforcement notice is upheld

Appeal C Ref : APP/Q1445/W/21/3277366

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tony Camps-Linney against the decision of Brighton & Hove City Council.
- The application reference BH202/03631, dated 10 December 2020, was refused by notice dated 26 February 2021.

- The development proposed was conversion of 2 no self-contained flats and former chiropody surgery room into 3 no self-contained flats (C3) (part retrospective) and erection of car port (retrospective).

Summary of decision: the appeal is dismissed

Preliminary matters

1. Since the issue of the Notices and the refusal of planning permission the subject of these appeals the National Planning Policy Framework (the Framework) has been amended. I have considered the appeals on the basis of the latest version and refer to the updated Framework within these decisions.
2. Appeal A and Appeal B concern enforcement notices relating to a car port and use of first floor as 2 studios respectively. Appeal C concerns a refusal of planning permission for conversion of the property into 3 flats and the carport. The main issues for some of the appeals are the same and I shall structure the decision accordingly.
3. In Appeal A and Appeal B the Appellant alleges that no plan was attached to the Notices and that the Notices are imprecise and ambiguous. He makes these points under a ground (e) appeal. But ground (e) concerns whether a Notice was properly served on everyone with an interest in the Land. There is no assertion about inadequate service so it is more pertinent that I deal with these issues as procedural matters that concern the validity of the notices rather than under ground (e).

Appeal A and Appeal B

Procedural Matter – the Notice

4. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
5. The Appellant alleges that the Notices the subject of Appeal A and Appeal B are not precise and are ambiguous. He says that no plan was served with either Notice, he draws attention to the photograph attached as an Appendix in Appeal A and the date of issue of each Notice. I shall address each of these issues in turn.
6. Whether the site plan was attached to each Notice served on the Appellant is a matter of fact. There is no supporting evidence before me to support the allegation that no plan was attached to the Notices received by the Appellant. The Council refutes the claim and points to the fact that their file copy and the notices in the enforcement register include an accurate plan.
7. Regulations provide that a notice shall specify the boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. Therefore, even if the Notices as served did not attach the site plan this does not make the notice per se a nullity. I am satisfied that the description of the

land by address is sufficiently precise to enable the Appellant to understand the boundaries of the land the subject of the notices.

8. The courts have held that the recipient of an enforcement notice is entitled to find out from within the four corners of the Notice what is required. Vague or ambiguous requirements offend that rule. I find the photograph attached as Appendix A to Notice A to show clearly the part of the car port required to be removed. There was no disagreement between the parties at my site visit when they agreed and demonstrated to me the physical location of the red lines on the photograph. I am satisfied that no correction or variation is required to the requirements of the Notice.
9. The Notices in Appeals A and B at paragraph 7 state that the notice takes effect on 22 October 2021 unless an appeal is made against it beforehand. The Annex to each Notice under the section headed 'your right of appeal' refers to the notice taking effect on 15 October 2021. There is clearly an error on the face of the Notices in citing two different dates. But no prejudice has been suffered by the Appellant and as appeals have been lodged there is no need to correct the notices.

Appeal A The appeal on ground (a) and Appeal C carport

Main Issues

10. The main issues are the effect of the development on (i) the character and appearance of the host dwelling and surrounding area and (ii) the living conditions of occupiers with particular regard to the adequacy of external amenity space.

Character and appearance

11. The appeal site is a two storey semi-detached property in a predominantly residential area. The carport (the subject of Appeal A and for which planning permission is sought retrospectively in Appeal C) sits at the rear of the property. It is constructed of a timber frame and corrugated plastic panels.
12. The development plan (including the Brighton & Hove City Plan Part 1 and the Brighton & Hove Local Plan) mirrors the Framework in seeking to ensure that development respects its setting. Policy QD14 of the Local Plan emphasises the importance of well designed, sited and detailed alterations and extensions. I have also taken into account SPD12 Design Guide for Extensions and Alterations. The Brighton & Hove City plan Part Two is at an advanced stage of development. Its draft policies, including policy DM21, therefore attract weight as a material consideration.
13. Access to the car port is at the rear of the host dwelling from St Leonards Avenue. The gables of neighbouring properties in St Leonards Avenue face the highway. The car port by virtue of its height and scale is a dominant structure highly visible in the streetscene. Similar development is not a feature of the surrounding area. Whilst it is of no greater height than the outrigger to which it is attached it covers a significant area of the outside amenity space and is not subservient to the host dwelling. It creates a dominant feature out of keeping with its surroundings. It causes harm to the character and appearance of the area and is contrary to the Framework and relevant development plan policies.

Amenity Space

14. The construction of the car port in the curtilage of the host dwelling inevitably removes available external space at the rear of the building. Whilst there is some limited amenity space at the front and side of the property, there is no useable uncovered amenity space at the rear of the dwelling for day to day recreation and quiet enjoyment. The proximity of public amenity areas and the provision within the car port of bicycle storage does not outweigh the harm caused by inadequate amenity space to the living conditions of future occupiers of the residential units.

Overall conclusions

15. I have concluded that the carport causes harm to the character and appearance of the area and the loss of amenity space causes harm to the living conditions of occupiers. I have considered whether material planning considerations exist in this case that weigh against the refusal of permission. I have considered the individual needs of the Appellant and his family and have noted the confidential submissions before me about personal circumstances. I have had regard to the Public Sector Equality Duty. I note that the Council took these considerations into account in not requiring the removal of the entire structure but allowing retention of a section of the car port. I agree this to be a proportionate and reasonable conclusion. The fact that the Council did not cite the car port as a reason for refusal of planning permission in Appeal C does not alter my conclusions.
16. I have considered whether the identified harm could be mitigated by conditions. I note the personal condition proposed by the Council in the event that the appeals are allowed but personal circumstances rarely outweigh general planning matters. Planning permission usually runs with the land and the Planning Practice Guidance states that it is rarely appropriate to provide otherwise. It would not in my view be appropriate to grant a temporary or personal permission given the permanence of the development. Whilst I sympathise with the reasons before me as to the need for the car port there is no evidence before me that the Appellant would be unable to use it for its stated purpose if a portion is removed as required by the Notice.
17. For the reasons given above I conclude that Appeal A should be dismissed and planning permission is refused on the deemed planning application the subject of Appeal A and the retrospective application for the car port the subject of Appeal C.

Appeal A ground (f)

18. This ground of appeal is that the steps required by the notice exceed what is required to satisfy its purpose. There are two purposes that an enforcement notice can seek to satisfy. Firstly, to remedy the breach of planning control and secondly to remedy the injury to amenity caused by the breach. In this case the Council has required part removal of the carport and therefore its purpose is to remedy injury to amenity
19. The Appellant argues that the removal of part of the car port is illogical as doing so would make little if any difference to the streetscene and therefore is excessive.

20. But the identified harm relates to loss of amenity space as well as visual harm. The required steps will increase amenity space and a reduction of the size of the structure will also have some impact on visual harm. I consider the steps to be reasonable to remedy the injury to amenity having taken into account the personal circumstances of the Appellant and his family.

21. For the reasons given, this ground of appeal does not succeed.

Appeal A ground (g)

22. This ground of appeal is that the time given to comply with the notice is unreasonably short.

23. The Notice provides for a 6 month compliance period. The Appellant argues that it would be reasonable to await the outcome of Appeal C but since making the submissions the appeals have been linked and therefore this argument falls away.

24. I recognise the role of the Appellant as a carer and the potential delay in securing contractors. Taking those matters into account I shall vary the compliance period from 6 months to 9 months.

25. For the reasons given above I conclude that a reasonable period for compliance would be 9 months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Appeal B Ground (b) appeal

26. Appeal B concerns the change of use of the first floor to two studios.

27. A ground (b) appeal is a claim that the matters stated in the enforcement notice have not occurred as a matter of fact. The Appellant argues that no change of use has taken place as the studio flats have not been occupied.

28. There is no dispute that the physical works necessary to facilitate actual use as two studios has been completed. Letters from prospective tenants demonstrate that it is ready for early occupation. Established caselaw drawn to my attention by the Council recognises that in considering whether there has been a change of use the issue is not limited to actual use but relevant factors should be considered in the round. In this case the physical works are complete and the imminent intended use as two studios is not in dispute. I therefore conclude that the matters stated in Notice B have occurred as a matter of fact.

29. For the reasons given this ground of appeal does not succeed.

Appeal B Ground (a) appeal and Appeal C conversion of first floor

Main Issue

30. The main issue is the effect of the development on the living conditions of current and future occupiers of the first floor of the building with particular regard to the adequacy of accommodation.

Living Conditions

31. The unauthorised development the subject of Notice B in Appeal B comprises the change of use of a first floor flat to two studios. Appeal C includes the retrospective conversion of the first floor to two studios.
32. The development plan mirrors the Framework in seeking to ensure that development provides a high standard of amenity for existing and future users. Saved policy QD27 states that planning permission will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing or adjacent users.
33. The Council has no development plan policy or local guidance for internal living space standards for flats or studios. I note that policy DM1 of the Draft Brighton & Hove City Plan Part 2 proposes that all residential units should meet the Government's Technical Housing Standards¹ (the Standards) and given the stage of preparation of the emerging plan I have given weight to this emerging policy.
34. The Council cannot demonstrate a 5 year land supply and there is no dispute between the parties that in these circumstances increased weight should be given to housing delivery when considering the planning balance. I shall apply the tilted balance test set out in the Framework namely, whether any adverse impact of the development significantly and demonstrably outweigh the benefits.
35. The gross internal floor area of studio 1 is 30.6 sqm and for studio 2 is 24.3 sqm. Each falls short of the 37 sqm minimum requirement for a one bedroom/one person unit set out in the Standards for a studio unit. However, whilst I recognise that the Standards provide an established benchmark against which to assess proposals they should not be strictly applied and I have taken a more flexible approach in assessing whether the internal living space provides adequate living conditions.
36. From my observations during my site visit I found that both flats had noticeably restricted movement and limited circulation space for day to day living allowing for a limited range of furniture and storage space for personal belongings. In the case of studio 2 the bathroom is accessed through the kitchen area with the bathroom door opening into the small kitchen space. Overall, they felt distinctly cramped. At the site visit I climbed to the loft space but I did not find access to this storage space easily accessible for day to day living.
37. Given that there is little additional private or shared internal or external amenity space available to occupiers I find that the space available to each studio falls below a level that could reasonably be considered as adequate for permanent residential occupation. I note the letters before me from prospective tenants but the fact that prospective occupiers are content with the accommodation is not conclusive of the absence of harm.
38. I have taken account of the access to natural light and outlook in both flats and that each has a high standard of design with good quality internal fixtures and fittings. I note also that the development relates to the conversion of an existing building within a built up area with good links to shops, public

¹ Technical Housing Standards – Nationally Described Space Standard (DCLG 2015)

transport and services. But these factors do not mitigate the harm to living conditions and loss of amenity to occupiers resulting from inadequate living space.

39. The Council does not have a 5 year land supply. Small units can make a positive contribution to local housing need especially in highly priced areas. The development makes a contribution of one single unit of housing in the city and provides some economic and social benefits.
40. The Appellant draws to my attention other appeal decisions, including 66 Buckingham Road. Whist I do not know the circumstances of the site in that case the Inspector did not find the units to be cramped and it is therefore not directly comparable.
41. The Appellant also draws attention to units of accommodation available in the city with floor space less than the Standard. Again I do not know the circumstances of the examples listed but in any event their existence does not justify further poor quality development.
42. I have given careful consideration to the appeal decision concerning an earlier scheme of development at the site. The decision was in 2015 when different policy circumstances applied and it considered a different scheme. I am not bound by the earlier Appeal decision and in any event do not consider it incompatible with my conclusions in these appeals.
43. In applying the tilted balance test I conclude that the harm to living conditions by virtue of inadequate living space significantly and demonstrably outweighs the modest benefit to housing delivery of one single residential unit of poor quality. Planning permission should not be granted.
44. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. Conditions would not address the identified harm.
45. For the reasons given above I conclude that the Appeal B ground (a) appeal should be dismissed and planning permission should not be granted on the deemed application or the first floor proposals the subject of Appeal C.

Appeal B – the appeal on ground (f)

46. This ground of appeal is that the steps required by the notice exceed what is required to satisfy its purpose. There are two purposes that an enforcement notice can seek to satisfy. Firstly, to remedy the breach of planning control and secondly to remedy the injury to amenity caused by the breach. In this case the Council has required cessation of the use of first floor flats as 2 studios and therefore its purpose is to remedy the breach of planning control.
47. The Appellant argues that as the two studios have not been occupied the Notice has been complied with by default.
48. But the physical works to facilitate the change of use are complete and I have found under the ground (b) appeal that the change of use has occurred as a matter of fact.

49. The purpose of the notice is to remedy the breach of planning control. No lesser steps would achieve that purpose.

50. For the reasons given above this ground of appeal does not succeed.

Appeal C

51. The application the subject of Appeal C is for the conversion of 2 no. self contained flats and former chiropody surgery room into 3 no, self contained flats (C3) (part retrospective) and erection of car port (retrospective). The first floor studios and carport have been considered earlier.

52. With respect to the ground floor the Standards are met. I recognise that the flat has been designed for the particular circumstances of the Appellant and his family. The Council takes no issue with the loss of community facility and I agree. I conclude that the conversion of the ground floor causes no undue harm to the living conditions of occupiers.

53. But I have found that the first floor studios and carport cause identified harm and should not be granted planning permission. The absence of harm on the ground floor does not outweigh the identified harm. The development is contrary to the Framework, relevant development plan policies and planning permission is refused.

54. The appeal is dismissed.

Formal Decisions

Appeal A ref: APP/ Q1445/C/21/3284744

55. Appeal A is allowed on ground (g) and it is directed that the enforcement notice be varied by the substitution of a 9 month period for compliance. Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B ref: APP/ Q1445/C/21/3284745

56. Appeal B is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C ref: APP/ Q1445/W/21/3277366

57. Appeal C is dismissed.

Sandra Prail

INSPECTOR