
Appeal Decision

Unaccompanied site visit made on 6 April 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 26 April 2022

Appeal Ref : APP/Q1445/C/21/3285156

Land at 20 Bavant Road, Brighton, BN1 6RD

- 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 Thomas Edward McGrath against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 15 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the removal of front boundary wall and piers and creation of hardstanding area at the front of the Property.
- The requirements of the notice are to re-instate the front boundary wall and piers to its previous design and dimensions, using similar materials to match the previous brick wall and piers in place.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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

Preliminary Matter

1. Since the issue of the Notice and submission of statements the National Planning Policy Framework (the Framework) has been amended. I have considered the appeal on the basis of the latest version and refer to the updated Framework within this decision.

Ground (a) appeal and deemed application

Main Issue

2. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the appeal site and its surrounding area, with special attention to the Preston Park Conservation Area.

Character and appearance

3. The appeal site is a semi-detached two storey dwelling located within a predominantly residential area. It sits within the Preston Park Conservation Area (the Conservation Area). An Article 4 Direction covers the site removing permitted development rights for alterations to boundary walls.
4. The Conservation Area is characterised by wide roads fronted by mainly residential properties set back from the road frontage by gardens, the fronts of

which are delineated generally by low walls with pillars. I agree with a previous Inspector on appeal that this arrangement provides a sense of space and orderliness, with greenery in the front gardens softening the built environment. Well vegetated front gardens with low boundary walls and gaps in between dwellings provide glimpses between buildings to trees and greenery beyond. Off street parking where it does exist tends to be on driveways alongside buildings leading to garages at the side or rear of the dwelling.

5. The development plan (including the Brighton & Hove City Plan Part One and retained policies in the Brighton & Hove Local Plan) mirrors the Framework in seeking to ensure that development is in keeping with its surroundings and is of good design. Policy CP12 of the City Plan Part One seeks to conserve or enhance the city's built heritage and its setting. Policy CP15 states that the city's historic environment will be conserved and enhanced in accordance with its identified significance giving the greatest weight to designated heritage assets and their settings. I have also taken into account policies in the emerging City Plan Part Two and Supplementary Planning Document 09 Architectural Features (the SPD) which emphasises the importance of the rhythm created by regular spacing of piers and gateways to a street's character and that the loss of gardens to hard impervious parking areas is harmful visually and environmentally.
6. The works the subject of the notice have created an open front boundary and hard surface forecourt enabling parking to take place immediately in front of the building. There is limited room for planting. The removal of the boundary wall and piers is out of character with the streetscene. It upsets the rhythm of the front boundaries which are a positive contribution to the Conservation Area. The hardstanding does not contribute positively to the openness of the area. It enables vehicular parking that dominates the frontage of the host dwelling and is contrary to the positive characteristics of the Conservation Area as described earlier. The development fails to conserve or enhance the character and appearance of the Conservation Area and causes less than substantial harm to the significance of the Conservation Area.
7. I have weighed the benefits of the development against this identified harm. I acknowledge that forecourt parking is convenient for occupiers and potentially removes parking pressure on nearby roads. I also recognise that there is some wider benefits from the provision of an electric vehicle charging point and its contribution to the Council's aims to increase the use of renewable energy. But these benefits do not outweigh the identified harm. The public benefits do not outweigh the great weight that the Framework and development plan policies provide should be afforded to the conservation of heritage assets. The development conflicts with the Framework, relevant policies in the development plan and the SPD.
8. The Appellant draws attention to other off street parking in the locality. I do not know the circumstances of these sites but in any event they do not justify the harm identified in this case. The examples drawn to my attention at nos 16, 18 and 22 are not characteristic of the area.
9. For the reasons given, I shall refuse to grant planning permission for the works carried out.
10. But the Appellant does not seek planning permission for the development the subject of the notice. Instead he seeks planning permission for alternative

development, namely the scheme the subject of planning application reference BH2021/00916 (Application 00916). This application was refused and since the submission of statements an appeal has been dismissed on appeal (ref APP/Q1445/D/21/3277939).

11. The deemed planning application in this ground of appeal includes the power to grant planning permission 'in relation to the whole or any part' of the matters alleged in the notice. I have therefore considered whether the development the subject of Application 00916 could reasonably be considered as part of the development carried out and if so whether it would overcome the planning harm identified. This approach is consistent with the caselaw referred to me by the Appellant.
12. The description of development for Application 00916 was the erection of front boundary wall and 2no. pillars (part retrospective). I have considered the plans submitted with the application and these do not include the gate shown in the computer generated image produced by the Appellant in his submissions. The relocation of pillars and the recontouring of hardstanding goes beyond what could reasonably be considered as part of the development carried out. The development the subject of Application 00916 is an alternative scheme not part of the development already carried out. It is therefore not within the remit of the deemed planning application in this ground of appeal.
13. In any event I share the judgement of the previous Inspector on appeal that the proposed development the subject of Application 00916 would cause less than substantial harm to the Conservation Area that is not outweighed by public benefits. Application 00916 reduces the span of front boundary wall, creates an over proliferation of hardstanding and dominant vehicular parking in the front garden. It causes unacceptable harm to the authenticity and integrity of the appeal site and the character and appearance of the Conservation Area. It conflicts with the Framework, relevant policies in the development plan and the SPD.
14. For the reasons given above, I conclude that the appeal should not succeed, I shall refuse to grant planning permission in whole or part on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (f) appeal

15. This ground of appeal is whether having regard to the purpose for which the notice was served the steps exceed what is necessary to meet that purpose.
16. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach.
17. In this case the steps require reinstatement to its previous condition. Its purpose is therefore to remedy the breach of planning control.
18. The Appellant argues that the steps are excessive and that lesser steps namely, the proposals the subject of Application 00916 would overcome the identified harm.
19. I recognise that the purpose of enforcement is not punitive. I have considered in the ground (a) appeal whether Application 00916 is an alternative option

that would remedy the harm to amenity at less cost and disruption than demolition. But as explained above I do not consider it an obvious alternative that could be regarded as within the remit of the deemed planning application and in any event it does not remedy the identified harm. The Appellant's suggestion to vary the requirements of the notice to permit rebuilding in accordance with the proposed elevations and proposed ground floor plan submitted with Application 00916 is not a lesser step that overcomes the identified harm.

20. The purpose of the Notice is to remedy the breach of planning control. The requirements of the notice satisfy that purpose.

21. I therefore conclude for the reasons stated above that the appeal should not succeed.

Formal Decision

22. The appeal 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.

S. Prail

Inspector