The Planning Inspectorate

# Appeal Decisions

Site visit made on 2 August 2023

**by Andy Harwood CMS MSc MRTPI**

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

**Decision date: 11 September 2023**

**Appeal A Ref: APP/Q1445/C/22/3308178**
**566 Falmer Road, Brighton BN2 6NA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Kevin Wood against an enforcement notice issued by Brighton and Hove City Council.
- The notice was issued on 7 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a double garage to the front of the property.
- The requirements of the notice are to: Remove the double garage in its entirety, including any associated hardstanding, from the front of the property.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Appeal B Ref: APP/Q1445/W/22/3305944**
**566 'Alpine Lodge', Falmer Road, Woodingdean, Brighton BN2 6NA**

- 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 Mr Kevin Wood against the decision of Brighton and Hove City Council.
- The application Ref BH2022/01363, dated 22 April 2022, was refused by notice dated 1 August 2022.
- The development proposed is described as 'building a double garage at the front of my property within the boundaries and of a normal height and size for a double garage.'

## Appeal A Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Appeal B Decision

2. The appeal is dismissed.

## Preliminary Matters

3. Since the Council made its decisions, they have adopted the Brighton & Hove City Plan Part Two on 20 October 2023 (Part 2 Plan). I am aware that the Brighton and Hove Local Plan policies are no longer relevant. Policy DM21 of the Part 2 Plan is worded the same as the submission draft policy which was referred to on both the Enforcement Notice and the refusal of planning permission.

4. The appellant has suggested that reducing the size of the garage could be considered. This in effect constitutes an appeal on ground (f) with respect to Appeal A. That ground of appeal, as set out in s174(2)(f) against the notice is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity that has been caused by the breach.

**Appeal A on Ground (a) and Appeal B**

5. Under this ground of appeal, planning permission is sought for what is alleged on the notice. The terms of the deemed application for planning permission are therefore limited to the breaches of planning control as corrected. I can consider whether the whole or any part of those matters are acceptable on their planning merits.

*Main issue*

6. The main issue is the effect of the development on the character and appearance of the appeal site and the street-scene along Falmer Road.

*Reasons*

7. The appeal site is located along a busy main road in a mainly residential area on the outskirts of Brighton. There are groups of commercial properties as well such as the large public house and parade of shops close to the junction of Warren Road and Warren Way with Falmer Road. Falmer Road also stretches for a long distance past the junction and overall has a varied character.

8. The area to the north of the junction contains a variety of house styles generally with a significant amount of space in front gardens and driveways which are set behind front boundary walls and fences. The heights of front-boundary structures along the back-edge of the footpaths along the road vary but many of the properties contain hedges, trees and other landscaping behind which soften the street-scene. The area, generally speaking, has a spacious and leafy character.

9. The house at the appeal site is set back from the road in a manner that is characteristic of the general building pattern along the road. The partly completed building subject of these appeals is positioned immediately behind the brick wall that defines the back edge of the footpath. The garage is much higher than the wall and the plans submitted with the planning application show that it is intended to be rendered and will have a flat roof. In this position, the large structure dominates the front of the property, obscuring views of the house behind from all directions. Due to the slope downward of the road to the south, the building is particularly prominent when approaching from that direction. Even if the building were to be rendered, its bulk taking up so much space goes against the general spacious character of the area. This position so close to the front boundary means that there also is no scope to provide planting to soften its impact. Furthermore, particularly on approach from the south, it interrupts landscaping on adjoining properties.

10. There are some properties that do not contain any landscaping at the front and where the front boundaries appear to have been opened-up to allow for more parking, resulting in less landscaping. Those examples also go against the general character of the area. There are also other examples further to the south of the junction such as those referred to by the appellant, where there

are a cluster of properties with buildings in front gardens. One of those in particular also allows for no scope for any planting to soften the impact of the outbuilding. These examples do not however have an overriding impact upon the character and appearance of the area. Furthermore, those examples and the industrial and commercial developments nearby do not provide a justification for further development that degrades the leafy qualities of the street-scene close to the site.

11. In relation to the main issue, the development has had a harmful effect on the character and appearance of the appeal site and the street-scene along Falmer Road. The development is not, for the reasons I have set out above, well designed and scaled, sited and detailed in relation to the property and the surrounding area. Furthermore, the development does not take properly into account the existing character of the area. As such, the development does not comply with Policy DM21 of the Part 2 Plan. Furthermore, this does not comply with the National Planning Policy Framework's (the Framework) advice that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Recent very limited changes to the Framework have not altered this advice.

*Other matters*

12. The way in which the Council may or may not have investigated the breach of planning control and dealt with the application and notice is not directly material to how I need to consider the planning merits in the appeals. There are other processes for pursuing such concerns.

13. I have considered whether planning conditions could be used to secure the materials proposed but this would not overcome the harm that I have identified in relation to the main issue.

*Conclusion*

14. The other matters set out above do not therefore outweigh my conclusion in relation to the main issue. Having had regard to the development plan as a whole and all other material considerations, I conclude that Appeal A on ground (a) should not succeed and consequently, the deemed planning application shall be refused. For the same reasoning, Appeal B shall be dismissed too.

**Appeal A on ground (f)**

15. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The purposes of enforcement notices are defined in s173(4) of the Act. The requirements of the notice are to remove the double garage in its entirety including associated hardstanding. This clearly has the purpose with respect to s173(4)(a) to remedy the breach by restoring the land to its condition before the breach took place.

16. There is no suggestion that planning permission exists for a smaller garage. The garage is a single structure which along with the concrete base is one development. It would not be possible to reduce the size of the structure in order to remedy the breach. Therefore no lesser step can be drafted to achieve the purpose of the notice.

17. The appeal under ground (f) therefore fails.

## Conclusion

18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. I shall also dismiss Appeal B.

*Andy Harwood*

INSPECTOR