



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: 26 September 2023

Appeal A Ref: APP/Q1445/C/22/3310429 and 3310442

Land at 174 Cowley Drive, Brighton, BN2 6TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Ben Verrall and Mrs Verrall against an enforcement notice issued by Brighton & Hove City Council.
 - The notice was issued on 11 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of retaining walls and levelling of land to create a hardstanding in front garden.
 - The requirements of the notice are to: Completely remove the retaining walls, regrade land to previous contours, remove any excess materials and restore the front garden to its previous condition.
 - The period[s] for compliance with the requirement is: three months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (c), (f) 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.
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Decisions

1. The appeals are 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.

Preliminary Matters

2. Shortly after the notice was issued, the Council adopted the Brighton & Hove City Plan Part Two on 20 October 2023 (Part Two Plan). I requested confirmation of the implications of this from the Council and then re-consulted with the appellants to seek their views. This plan has superseded the Brighton and Hove Local Plan 2005 which had been referred to on the enforcement notice. The Part two Plan and the Brighton and Hove City Plan, Part One (Part One Plan) are therefore relevant to consider.
3. At my site visit, the appellants indicated that they did not want the Council's planning officer to enter onto the site. Sensing a degree of bad-will between the parties, I asked the Council officer to sit in their vehicle and for the appellants to go into their property. Both parties could see me whilst I went into the front garden to view the development unaccompanied.

The Appeal on ground (b)

4. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact. I need to reach a view on the balance of probabilities.

5. When I visited the site, I saw that the area between the flats at Nos 172 and 174 and the footpath alongside Cowley Drive, within the front garden, has had 3 substantial block-walls built-up from the back edge of the pavement. This has created a substantial structure which is not complete but there is no dispute that it is part of what is intended to be used as a vehicle parking area.
6. The structure retains a substantial amount of material from what I could see that includes gravel and soil. Given the level of the pavement and the substantial drop to the front of the house along with the 'existing' plans that were prepared as part of the previous submission¹, (the 'previous appeal') this has clearly formed a substantial build-up of material and has created a more level area than the previously sloping garden.
7. The development as alleged although not complete has occurred as a matter of fact. As such the appeal under ground (b) fails.

The Appeal on ground (c)

8. The appeal against the notice on ground (c) is that what is alleged does not constitute a breach of planning control. Again, the onus is upon the appellant to prove their case on the balance of probabilities.
9. The construction of the block walls along with the substantial material being retained by them are together a considerable permanent structure covering a large proportion of the area between the flats and the road. I noticed that a double skin of blocks has been used on the wall furthest from and parallel with the pavement, which includes some metal reinforcing rods that were protruding from the blocks. Some expertise has been applied in this construction. Whether these are works that would normally be undertaken by a builder or engineer may be moot but either way, these works cannot reasonably be considered as 'de minimis' (too trivial or minor to merit consideration) or even further from reality, impermanent. My view is that given the scale of the walls and the quantity of materials that appear to be retained, this structure has been formed by the undertaking of engineering operations.
10. The appellants also allude, without specific reference to the Permitted Development Order² (the PD Order), to permitted development rights when stating that they can install a hardstanding or decking or permeable surface as well as erect a fence around the garden provided it is set back 2m from the carriageway. Permitted development rights could authorise some operations by reason of the PD Order, Article 3. Within the curtilage of dwellinghouses Part 1 of Schedule 2 to that order provides permission for a number of developments such as a hard surface for any purpose incidental to the enjoyment of the dwellinghouse within a set of specific limitations. These engineering works would not fall within the relevant parameters as they do not merely provide a hardstanding or decked area. Furthermore, these Part 1 rights do not apply in this case because Article 2(1) confirms that such rights are not included for buildings that are separated into self-contained flats.
11. Some other permitted development rights may apply which are not limited only to dwellinghouses that are not flats. For instance, the PD Order, Schedule 2,

¹ APP/Q1445/W/22/3300748 – Appeal against the refusal of application BH2022/01011 for “alterations to front garden including a hardstanding to provide car parking space with car charging station, new fencing, steps and installation of vehicle crossover.”

² The Town and Country Planning (General Permitted Development) (England) Order 2015

part 2, Class A grants permission for fences or other “means of enclosure”. However, the walls that have been constructed in this case are not “means of enclosure”, they are engineering works which are a means of containing and retaining material to provide a more level surface. The structure would not therefore constitute permitted development under these provisions.

12. Planning permission is required for what is alleged. The appeal under ground (c) fails.

The Appeal on Ground (a) and the deemed planning application

13. Under this ground of appeal, planning permission is sought for what is alleged on the notice. As recently as 19 April of this year, the previous appeal was dismissed for a similar proposal, as referred to above. I will reconsider the planning merits of what is alleged in the notice but the main issues are similar.

Main issues

14. Given the reasons for issuing the notice, the main issues are:
- The effect of the development on the character and appearance of the appeal site and surrounding area; and
 - The effect upon living conditions for neighbouring occupiers.

Character and appearance

15. The development is constructed close to Cowley Drive in front of the building which contains 2 flats. The appellants live in the first floor flat. Without the development, as shown on the ‘Plan as Existing’ submitted with the ‘previous appeal’, the garden would be sloped down considerably from the road towards the ground-floor level of the ground-floor flat.
16. This is a largely residential area with mainly 2-storey dwellings laid out in an attractive suburban manner with grass verges and street trees helping to soften the street-scene. The road appears to have been cut into a hillside with the houses and gardens on the northern side of the road being considerably higher than those to the south. The appeal site is on the southern, downhill side with gardens being inherently more private than the prominent gardens to the northern side of the road. That privacy is further enhanced on many properties by reason of front walls and hedges defining the boundaries between front gardens and the pavement. Some of those walls and hedges have been removed however and other fencing is used in places including wire mesh and close-boarded fences. There are examples where front boundaries have been removed and also some where parking areas have been created at the fronts of dwellings. Generally speaking however, the front boundaries of the dwellings on the down-hill side of the road compliment the general qualities of the area that I describe above.
17. The plans submitted with the previous appeal, show that the front boundary of this site was previously demarcated with a timber fence. Even though that is different from many of those walls or fences along this side of the street, it did separate the private space behind. Conversely, the opening up of the frontage and the construction of the development has resulted in the part completed retained area being in very prominent view. This has a stark, over-engineered appearance is in contrast with the prevailing attractiveness of the area. Given

the intended function as a parking area, there is little scope for the inclusion of any planting to soften its impact. These impacts would be emphasised if a vehicle were parked on top in contrast general sloped, landscaped gardens nearby. Even if high quality materials are proposed if the structure were completed, this would not making a significant difference to these impacts.

18. In relation to the first main issue, the development has caused a harmful effect on the character and appearance of the appeal site and surrounding area. This does not therefore raise the standard of architecture or design, nor does it help to establish a strong sense of place. As such this does not comply with Part One Plan Policy CP12. Furthermore, the development is not well designed and does not take into account the existing character of the area. This does not comply with Part Two Plan Policy DM21.

Living conditions

19. The structure is in close proximity to the front elevation of the flats. The bottom flat, which is not occupied by the appellants, has windows that face directly towards the rear-most part of the structure. A strip of garden would be retained but nevertheless, this is an oppressive arrangement given that people looking out of that window would look out onto a stark, solid wall rather than a more open garden area, which would have previously given them a buffer between the window and the activity and vehicles along the road.
20. In addition, if a car was parked on top of the structure as planned, that would add to this oppressive nature, as would head and taillights shining close to it. Such intermittent lighting can be very intrusive as can doors of a vehicle being opened and shut. If a vehicle with an internal combustion engine were parked and driven on and off the raised parking area, which could not be reasonably prevented, it would result in more noise as well as fumes than if an electric vehicle were used. With or without a vehicle, the raised structure could bring further, potentially noisy activity high up in relation to and close to that window. I saw a plastic wheeled refuse-bin on top of the structure and moving items such as that around can be the cause of substantial noise in my experience.
21. In relation to this main issue, the development would have a harmful impact upon living conditions for neighbouring occupiers, particularly those in the lower flat. Part One Plan Policies DM20 and DM40 between them, amongst other things, require the prevention of unacceptable loss of amenity for existing nearby users and the prevention of material nuisance and/or pollution that would cause unacceptable harm to the quality of life. I do not consider that these harmful impacts could be prevented and the development does not therefore comply with these policies.

Other matters

22. The development may help to reduce on-street parking although from what I saw along the road and in the absence of evidence to persuade me otherwise, this would seem to be of little benefit in terms of highway safety. The Council in a different role has also approved vehicle cross-overs to enable vehicles potentially to enter the properties nearby but I have no evidence to indicate that this required any assessment of the main issues in this case. The documents provided relating to the nearby approved cross-over at No 176 clearly draws attention to the need to seek "planning and building control

permissions". Furthermore, such a decision does not fetter my consideration of this appeal.

23. The appellants have clarified that they own the front garden area. However, this does not override the need for planning permission and does not change the impacts that it causes.
24. The parking space may have an electric charging point and that is clearly a benefit and would help provide infrastructure for modern vehicles. Part Two Plan Policy DM36 requires infrastructure to support low emission vehicles in new developments. It is not clear that this is a requirement in developments such as this, however it is clearly a commendable aim. Even if an electric vehicle were used at the site, and this would be made easier, on its own this would be a very limited benefit. It does add weight in favour of the development particularly given that it would be very difficult for the appellant to provide a permanent charging point to charge a vehicle parked on the roadside.

Conclusion

25. The other matters set out above including the limited weight I give to the provision of a charging point, do not outweigh my conclusion in relation to the main issues. Having had regard to the development plan as a whole and all other material considerations, I conclude the on ground (a) should not succeed and consequently, the deemed planning application shall be refused.

The Appeal on ground (f)

26. 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 by s173(4)(a) and (b). Sub-section (4)(a) refers to "remedying the breach" which is clearly the aim of the requirement to completely remove the unauthorised development.
27. The appellants suggest that the requirement goes too far and that a compromise could have been found. However, I have not been provided with evidence that there is an alternative that would remedy the breach of planning control.
28. The appeal under ground (f) fails.

Conclusion

29. 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.

Andy Harwood

INSPECTOR