



Appeal Decisions

Site visit made on 22 October 2024

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th December 2024

Appeal A Ref: APP/Q1445/C/23/3331019

Land at 5-7 Stanford Avenue, Brighton BN1 6AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by WP Properties Limited against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 30 August 2023.
- The breach of planning control as alleged in the notice is without planning permission, the removal of two sections of front boundary wall with railings and piers, erection of bin store, and installation of hardstandings.
- The requirements of the notice are to:
 1. Reinstate the removed sections of front walls with railings and piers, in the exact height, style, material, colour and finish as the remaining sections of front walls, railings and piers, as shown in appendix 1.
 2. Reduce the area of hardstanding to the front of no.5 Stanford Avenue and reinstate the north vegetated frontage (to the right hand side of the entrance steps) of the site, as indicated in appendix 2.
 3. Remove the bin store from the front of no.5 Stanford Avenue.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e) and (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.

Summary Decision: The appeal succeeds in part relating to the bin store under ground (e). However, the remainder of the appeal is dismissed. The notice is upheld, with corrections and variations as set out below in the Formal Decision.

Appeal B Ref: APP/Q1445/W/23/3326824

5-7 Stanford Avenue, Brighton BN1 6AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by WP Property against the decision of Brighton & Hove City Council.
- The application Ref is BH2022/02891.
- The development proposed is revised parking arrangement, installation of Aco drainage channels, and reduction in height of an existing bin store.

Summary Decision: The appeal is allowed in part and planning permission for the bin store is granted in the terms set out in the Formal Decision below. The remainder of the appeal is dismissed.

Preliminary Matters

1. The post code set out on the enforcement notice subject of appeal A was incorrect. The parties have confirmed that it would not cause injustice to either the Council or appellant if I were to correct it, so I will do so.

2. The second requirement contains a minor typographical error and should refer to right hand side. I will correct that in my decision. This is a very minor correction that would not cause injustice to either the Council or appellant.
3. I note that the planning application form relating to appeal B refers only to 7 Stanford Avenue. However, all supporting documentation refers to 5-7 Stanford Avenue. The Council dealt with the application on that basis, so I shall deal with the appeal in the same way.
4. The developments subject of appeal A and appeal B differ. That subject of appeal B seeks to reinstate parts of the frontage walls and railings, reduce the amount of parking and hardstanding to the front and the bin store is proposed to be reduced in height.

Appeal A on Ground (e)

5. An appeal on ground (e) is that copies of the enforcement notice were not served as required by Section 172 of the Act. Section 172 of the Act requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. In this case, the Council served the notice on the owners, their mortgage provider and occupiers of Flats 1 to 16 within 5 and 7 Stanford Avenue. They did not serve the notice on the occupiers of the houses at 5a and 5b Stanford Avenue. My attention has not been drawn to any other method of serving the notice, such as affixing the notice to the bin stores.
6. The red line on the site plan relates to the building at 5-7 Stanford Avenue and the land within its curtilage. It includes the houses to the rear that have been constructed in recent years. The bin store referred to in the notice serves those two houses. The appellant sets out that the appeal under ground (e) relates only to the bin store and not the remainder of the development.
7. The Council suggest that they served a notice under section 16, although do not refer to which Act or other regulations this relates to. They state that the response referred only to the occupiers within the flats and not those two houses. The notice and response have not been submitted during the course of the appeal. The Land Registry details show the ownership of the appeal site, not occupiers.
8. The occupiers of 5a and 5b Stanford Avenue were sent notification of the appeal, so would have been aware of the enforcement notice at that stage. However, it is unclear whether they would have appealed had they been made aware of the enforcement notice when it was first issued.
9. It is clear that the occupiers of the houses at 5a and 5b Stanford Avenue were not served with copies of the enforcement notice. They are affected by the part of the notice relating to the bin store. The removal of the bin store, as required by the notice, would affect the occupiers of those houses such that they have been substantially prejudiced by the failure to serve them.
10. Success of the appeal under section 174(2)(e) of the Act could be that the notice was served incorrectly such that the whole enforcement notice should be quashed. However, section 176(1) of the Act states that on an appeal under section 174 of the Act I may vary the terms of the notice provided that I

am satisfied that variation will not cause injustice to the appellant or the local planning authority. Varying the enforcement notice and the attached plan to remove reference to the bin store would not cause injustice to either appellant or local planning authority, particularly taking account that I am granting planning permission for a bin store under appeal B.

11. For these reasons, I conclude that the appeal under ground (e) should succeed and I will amend the enforcement notice and plan to remove reference to 5a and 5b Stanford Avenue and their bin store.
12. The bin store was the sole subject of appeal A on grounds (c) and (f). Given my conclusions on ground (e), I do not need to consider those grounds of appeal further. I also do not need to consider the bin store in appeal A under ground (a), although it remains part of the development subject of appeal B.

Appeal A on Ground (a) and the Deemed Planning Application Appeal B

Main issues

13. The main issues on both appeals are:
 - Whether the development preserves or enhances the character or appearance of the Preston Park Conservation Area;
 - The effect of the vehicle parking and crossovers on highway safety with regard to the adequacy of the visibility splays to either side of the access.

Reasons – Appeal A

Preston Park Conservation Area

14. 5-7 Stanford Avenue comprises a former pair of semi-detached houses, now converted to flats, with a pair of semi-detached houses, nos. 5a and 5b, located to the rear. The character of the property is similar to other development on this part of Stanford Avenue. Stanford Avenue is a particularly prominent part of the conservation area, this section being part of the main A23 leading into Brighton from the north. Development in the wider conservation area is of similar development particularly close to Preston Park, or denser historic terraced housing.
15. Properties on Stanford Avenue and the wider area generally have low walls on the road frontage, historically with railings above although many have been removed and replaced with close boarded fencing or hedges. There is a mix of planting and hardstanding to the road, the green planting resulting in a softer appearance to the street scene. The walls that were in front of nos. 5-7 contributed to the character and appearance of the road. As a result, they also contribute to the significance of the conservation area that is derived from the historic domestic character of built development around the park on this main route into Brighton.
16. Part of the frontage of the flats has been covered with hardstanding in order to provide additional parking. Whilst that is not uncommon on this part of Stanford Avenue, green planting previously made an important contribution to the character and appearance of the area. Its loss has harmed that character and appearance.

17. Whilst sections of the walls and railings remain, the removal of large sections in order to provide wider access drives to the hard surfaced parking behind has harmed the character and appearance of the conservation area.
18. For these reasons, the alterations to front boundary wall; extensions and alterations to hard landscaping to create a total of 4 no. vehicle parking spaces, with associated drainage and alterations has not preserved or enhanced the character or appearance of the Preston Park Conservation Area. Their removal has affected the significance of the conservation area as a heritage asset, although that harm is less than substantial. It is contrary to Policies CP12 and CP15 of the Brighton and Hove City Plan Part 1 (CP1), Policies DM18, DM21 and DM26 of the Brighton and Hove City Plan Part 2 (CP2) and the National Planning Policy Framework (the Framework) that seek to conserve and enhance the historic environment, including that development must preserve or enhance the character or appearance of the conservation area.
19. In accordance with paragraph 208 of the Framework this harm should be weighed against the public benefits of the development. In this case, the development enables easier access to the frontages of the property and additional parking for residents. That would lead to less pressure on public or on-street parking within the vicinity. Whilst that would provide a modest public benefit, it would not outweigh the harm I have identified to the significance of the heritage asset and the great weight that should be given to its conservation.

Highway safety

20. This section of Stanford Avenue is a one way street that forms part of the busy A23 leading into Brighton with a pavement to the front of nos. 5 and 7. Mature street trees line the road. The accesses to the parking areas are bounded to either side with pillars, the rest of the frontage being more open, with railings above low walls. Parking is provided on the frontage, those in front of no. 7 opening straight to the road, with no turning space. Those in front of no. 5 are parallel to the road, such that there may be a small amount of space to turn and vehicles may be able to enter and egress in a forward gear.
21. The pillars to either side of the wide accesses restrict visibility of drivers to either side, limiting visibility of pedestrians as cars egress the parking area. In addition, given limited manoeuvring space, vehicles may be egressing the site in reverse gear. This means there is risk to the safety of pedestrians as they walk along the pavement.
22. The street trees close to the accesses reduce visibility at the accesses. That closest to no. 7 is on the side from which vehicles approach on Stanford Avenue. Vehicles approaching to turn into the site have limited visibility of pedestrians. The tree restricts visibility of vehicles on the road as vehicles egress no. 7. The tree closest to no.5 is located slightly further away from the access and on the side to which visibility is less critical along the street. Other street furniture close to the entrance to no. 5 also affects visibility but is smaller and on the same side as the tree, limiting manoeuvring space on the exit to some extent, although not materially. As a result, the trees and other street furniture do not materially affect visibility for vehicles accessing and egressing no. 5.

23. For these reasons, I conclude that inadequate visibility splays from the vehicle crossovers enabling access to the front parking areas affect highway safety for pedestrians and vehicles using the highway. As a result, these are contrary to Policy CP13 of the CP1 and Policy DM33 of the CP2 that seek to reduce the adverse effect of parking and to create safe public spaces by ensuring development does not create road safety problems or dangers for any road users.

Reasons – appeal B

24. I consider that the walls, railings, hardstandings and parking areas comprise a single development that are linked to enable the parking and its access. However, the bin stores serve the houses to the rear of the flats, so could be considered a separate form of development. Consequently, I would be able to make a split decision on the two parts of the development.

Preston Park Conservation Area

25. I have set out under appeal A that the boundary walls with railings above contribute to the significance of the conservation area. As such, their reinstatement would mean that this element of the scheme would preserve the character and appearance of the conservation area.
26. However, the hardsurfaced parking areas, whilst reduced from the current situation subject of the enforcement notice, would result in loss of some green space that also contributed to the character and appearance of the area. Nevertheless, photographs of the street dated prior to the works taking place suggest hardstanding was provided in the same position at that time, such that this would also preserve the character and appearance of the conservation area.
27. The bin store would be altered with the removal of the pergola style roof such that it would comprise a modest and simple close boarded timber enclosure. I understand that it is in the location of the bin store relating to the houses at nos. 5a and 5b required to be provided and retained by planning permission reference BH2018/02596. Whilst I note the area provided was smaller, if the enclosure were removed, the bins would still be stored in this location.
28. The bin store is to the front of the buildings at 5-7 Stanford Avenue. As a result, this is a prominent location. As constructed, it restricts views of the house from the road to some extent. Whilst it is below the level of the ground floor windows, including decorative railings, it does restrict views to them due to the topography of the street. The reduction in height of the bin store proposed would result in less effect on views down the street given the topography and angle of views to the older part of the neighbouring building from the street.
29. Consequently, the effect of the altered bin store on the character and appearance of the conservation area would be limited. Taking account that a bin store is required in this location, albeit slightly smaller and not necessarily of this character or appearance, if reduced in height as proposed it would preserve the character and appearance of the conservation area.
30. Taking all the above into account, I conclude that, on balance, the revised parking arrangement, installation of Aco drainage channels, and reduction in height of an existing bin store would preserve the character and appearance of

the conservation area. As a result, it complies with Policies CP12 and CP15 of the CP1, Policies DM18, DM21 and DM26 of the CP2 and the Framework.

Highway safety

31. On appeal A, I concluded that inadequate visibility splays from the vehicle crossovers enabling access to the front parking areas affect highway safety for pedestrians and vehicles using the highway. The revised proposals subject of appeal B would result in less parking spaces provided. However, there would also be less manoeuvring space to enable access and egress in a forward gear, particularly at no. 5. The accesses between the pillars at the ends of the walls would be narrower, meaning visibility to either side, particularly along the pavement, would be reduced further.
32. I understand that the accesses may have been used in a similar way prior to the development taking place, including with lowered kerbs. However, I consider this would not overcome my concerns relating to highway safety around the accesses.
33. For these reasons, I conclude that the inadequate visibility splays from the vehicle crossovers enabling access to the front parking areas affect highway safety for pedestrians and vehicles using the highway. As a result, these are contrary to Policy CP13 of the CP1 and Policy DM33 of the CP2.

Other matters – both appeals

34. The development, whether in relation to appeal A or B, would provide off-street parking for residents of these properties. As a result, it has removed parking from the surrounding streets, that will affect parking stress in the area to a small degree as well as being of benefit to occupants. Those benefits include that they enable easier access to the flats by occupants with mobility problems, parents with children and facilitating the movement of heavy equipment related to the work of occupants. I have limited information on these needs and it is not clear whether an alternative form of parking including turning space could be provided. I note that some parking took place on the site prior to the development taking place and it may be possible to do so once the enforcement notice is complied with.
35. As a result, these benefits would not outweigh the conflicts with the development plan, comprising the CP1 and CP2, that I have found.
36. Other properties along the street also have parking areas to the front, some without turning space on site, and meaning frontage walls are missing or reduced in width across the site frontage. The visibility from these parking areas along the street and around trees and street furniture differs. I have taken these into account in coming to my decision, although they do not alter my conclusions on the main issues.

Conclusions on both appeals

37. For the reasons set out above, I conclude that on balance the bin store subject of appeal B complies with the development plan. Appeal B therefore succeeds insofar as it relates to the bin store.
38. I shall impose a condition specifying the relevant drawings as this provides certainty. Condition 2 is imposed to ensure that the proposed alterations to

the bin store are implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure implementation of the alterations before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

39. However, I conclude that on balance the alterations to front boundary wall; extensions and alterations to hard landscaping to create total of 4 no. vehicle parking spaces, with associated drainage and alterations do not accord with the development plan. Appeal A on ground (a), the deemed planning application and appeal B, in relation to these matters, therefore fail.

Formal Decision

Appeal A

40. It is directed that the enforcement notice is corrected and varied by:

- the deletion of the postcode "BN1 6FD" and its substitution with "BN1 6AD" in section 2 the land to which this notice relates;
- the deletion of the words ", erection of bin store" in section 3 the matters which appear to constitute the breach of planning control;
- the deletion of "4. The bin stores by virtue of their height, siting and material are an unduly prominent and incongruous feature that detract from the character and appearance of the host property and wider Preston Park conservation area. Accordingly, the development is considered contrary to policies CP12 and CP15 of the Brighton & Hove City Plan Part One and DM18, DM21 and DM26 of Brighton & Hove City Plan Part Two." in section 4 reasons for issuing this notice;
- the deletion of the words "right had side" and their substitution with the words "right hand side" in paragraph 2 of section 5 what you are required to do;
- the deletion of the words "3. Remove the bin store from the front of no.5 Stanford Avenue " in section 5 what you are required to do;
- the deletion of the words "1, 2 and 3" and their substitution with the words "1 and 2" in section 6 time for compliance; and
- the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

41. Subject to the corrections and variations, 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

42. The appeal is dismissed insofar as it related to alterations to front boundary wall; extensions and alterations to hard landscaping to create total of 4no vehicle parking spaces, with associated drainage and alterations. The appeal is allowed insofar as it related to erection of replacement bin store and planning

permission is granted for erection of replacement bin store to front of no.5 at 5-7 Stanford Avenue, Brighton BN1 6AD in accordance with the terms of the application, Ref BH2022/02891, and subject to the following condition:

- 1) The bin store hereby permitted shall be carried out in accordance with drawing nos.: 1172.07 Proposed Site & Block Plan, 1172.08 Proposed Ground Floor Plan and 1172.09 Proposed Street Elevation.
- 2) Unless the approved bin store is completed within 6 months all equipment and materials brought onto the land relating to the bin store shall be removed.

Upon implementation of the approved bin store specified in this condition, that bin store shall thereafter remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

AJ Steen

INSPECTOR



Plan

This is the plan referred to in my decision dated 27th December 2024

by **AJ Steen BA(Hons) DipTP MRTPI**

Appeal reference: APP/Q1445/C/23/3331019

Land at 5-7 Stanford Avenue, Brighton BN1 6AD

Scale: Not to scale

