



Appeal Decision

Site visit made on 10 November 2008

by **A J Bingham** TD Dipl Arch ARIBA MRTPI

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

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Decision date:
1 December 2008

Appeal Ref: APP/Q1445/C/08/2079818

87 Balsdean Road, Woodingdean, Brighton, East Sussex BN2 6PG

- 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 Mr Peter Joseph Barnard against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is: 2006/0638.
- The notice was issued on 6 June 2008.
- The breach of planning control as alleged in the notice is: "*Without planning permission:*
 - (i) *The construction of a replacement front boundary wall.*
 - (ii) *The removal of the south-west access of the property and the creation of the south-east access to the property.*
 - (iii) *The carrying out of engineering operations to change the ground levels of the front garden area and the creation of a hard standing*".
- The requirements of the notice are:
 1. *Reinstate front garden of No 87 Balsdean Road, to the condition which existed prior to the unlawful development as follows:-:*
 2. *Remove the front boundary walls and reinstate them to the dimensions and detail prior to the unlawful development.*
 3. *Remove the eastern access to the property and reinstate the western access.*
 4. *Reinstate front garden ground levels that existed prior to the unlawful development*".
- The period for compliance with the requirements is: "*16 weeks*".
- The appeal is proceeding on the grounds set out in Section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: the appeal is dismissed and the enforcement notice upheld with corrections.

The notice

1. I consider that the notice is erroneous in that the allegation refers to "*front boundary wall*" but the requirements cite "*front boundary walls*". By virtue of the requirements of the notice it must be clear to both principal parties that the notice is directed at the front and west flank walls of the front garden of the appeal property. In the circumstances I propose to correct the allegation in this respect. In addition, the allegation refers to the "*the south-west access*" and "*the south-east access*", while the requirements mention the "*eastern access*" and the "*western access*". I intend to correct the notice in order to regularise the description of the two accesses having regard to the fact that Balsdean Road runs almost due east to west. In my opinion I am able to make these minor corrections without injustice to the parties.

The appeal on ground (f)

2. The Appellant alleges that the requirements of the notice are excessive and that lesser steps would overcome the objection to the unauthorised development. In this respect the Appellant refers to a compromise solution to present a development with a "*design to be more closely [related] to planning requirements*". In order to achieve this objective the Appellant proposes to reduce the wall(s) to a more acceptable height and to change its (their) appearance to more closely match those of neighbouring properties. It is relevant to note that no dimensional details of the reduced height are provided as a basis for consideration of the appeal on ground (f). Neither are there details of the proposed means of changing the appearance of the subject wall(s).
3. In this regard, in its appeal statement, the Council contends that "*It is not the place of the LPA to re-design a scheme or propose a scheme that would be acceptable*". That is a reasonable comment, and one which equally applies to me. In view of this the Council claims that the minimum requirement is reinstatement of the appeal property to its former condition. As the matter stands, without any guidance from the Appellant as to the detail of his proposed compromise solution I cannot but agree with the Council. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

4. On this matter, the Appellant requests more time to comply with the requirements of the notice than the 16 weeks allowed. An appeal against refusal of planning permission for a replacement front boundary wall was dismissed in January 2008 and it is now argued that additional time should be allowed for the preparation, submission and registration of a revised application, including pre-submission negotiations with Council Officers. It is of relevance to note that the previous appeal was in connection with a retrospective application relating to the unauthorised development, the subject of the enforcement notice.
5. The Appellant states that further time would be required for the decision to be issued following submission of a revised application, particularly as the Council does not always determine planning applications within the statutory 8 week period. Subsequent to receipt of planning permission additional time should be allowed to appoint a contractor to commence and complete the reinstatement works required by the notice. The minimum time requirement for these various activities is 28 weeks.
6. The case presented by the Appellant would be more plausible had an appeal on ground (a) been made or the appropriate fees paid to enable the deemed planning application to have been considered. In those circumstances there would have been an aspiration that the appeal would have been allowed, and if dismissed a start on the activities mentioned by the Appellant could have been made at that time, with an extension to the 16 week period possibly a matter for just consideration. However, with no prospect of a planning permission resulting from this appeal, it seems to me that the Appellant was aware that action needed to be taken on dismissal of the Section 78 appeal in January of this year, or at the latest on submission of the appeal against this enforcement

notice only on grounds (f) and (g) on 16 June 2008. Alternatively, consideration could have been given to restoring the front garden of the appeal property to its former condition, which would not require the grant of planning permission.

7. The Council remains of the view that a 16 week period provides sufficient time to comply with the requirements of the notice or to submit a planning application for an alternative proposal. In the light of my observations set out at paragraph 6 above, I agree. Accordingly, I am not disposed to allow the appeal on ground (g).

Formal decision

8. I direct that the notice be corrected by:
- a. deletion of the phrase "*a replacement front boundary wall*" from sub-paragraph (i) of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED, and substitution therefor of the phrase "*replacement front boundary walls*".
 - b. deletion of the term "*south-west*" from the first line of sub-paragraph (ii) of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED, and substitution therefor of the word "*western*".
 - c. deletion of the term "*south-east*" from the second line of sub-paragraph (ii) of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED, and substitution therefor of the word "*eastern*".
9. Subject to these corrections I uphold the enforcement notice.

A J Bingham
Inspector

