
Appeal Decision

Site visit made on 24 September 2013

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 8 November 2013

Appeal Ref: APP/Q1445/C/13/2193426

Land at 14 Kensington Place, Brighton BN1 4EJ

- 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 Liane Rosemary Wiseman against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2012/0604.
- The notice was issued on 28 January 2013.
- The breach of planning control as alleged in the notice is: 'Erection of a porch at front elevation without planning permission'.
- The requirements of the notice are: 'Remove the porch from the ground floor front elevation'.
- The period for compliance with the requirements is two 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.

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

Appeal on ground (e)

1. The appellant states that the notice was not properly served. The Council sent two recorded delivery letters which included copies of the notice to the appeal site. One was addressed to the appellant and the other to the owner/occupier. The appellant states that these were not received by her. The Council has confirmed that the recorded delivery letters sent to the appeal property were not called for.
2. Section 172 (2) of the Act requires a copy of the notice to be served on the owner and any person having an interest in the land. The appellant has confirmed that she did receive the copy of the notice which was sent to 20 Broad Beach. This was received via the post office forwarding service which had not yet expired.
3. The Council served a section 16 Requisition for Information Notice on the appellant in October 2012. The required information was not returned to the Council. On 17 January 2013 the Council carried out a Land Registry Search to ascertain the title holder's details. This listed two addresses for the appellant, the appeal property and 20 Broad Beach Shoreham-by-Sea. The Council then sent copies of the notice by recorded delivery addressed to the appellant at both properties and one addressed to the owner/occupier at the appeal property.

4. The appellant was able to make an appeal against the notice and has not been prejudiced by not receiving a copy of it at the appeal site. Therefore even if the appellant was not served with the notice at the appeal site, she has been able to appeal and there is nothing to suggest that she, or anyone else, was disadvantaged by any deficiency in service. I will therefore exercise my powers under section 176(5) of the Act to disregard any deficiency which may have occurred.
5. The appeal on ground (e) fails.

Appeal on ground (c)

6. In appealing on ground (c), the burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the enforcement notice do not amount to a breach of planning control.
7. The appellant claims that the works which have taken place to the porch are a repair and therefore do not require planning permission. Section 55(2)(a) of the Act excludes from the definition of development the carrying out for the maintenance, improvement or other alteration of any building of works which, amongst other things, do not materially affect the external appearance of the building.
8. There is clear evidence that a porch did exist at the premises. However, this porch was demolished. A photograph dated August 2012, submitted by the Council, clearly shows that the previous porch was demolished and at that date no porch existed on the front elevation of the appeal property. The porch that was subsequently erected, and which is the subject of the notice, is therefore not a repair but a new porch. This new porch materially affected the external appearance of the building. I therefore find that the porch is development within the meaning of the Act.
9. The appellant has also referred to the ground floor plan which is listed in the planning approval (reference BH2012/02823) for the demolition of the existing rear kitchen and erection of a single storey rear extension at the appeal property. This plan has a hand-written note saying "renew existing porch". However, no further details are given on the drawings and no reference to a porch is included in the description of the proposed development or on the planning permission itself. In my view, the planning permission cannot be construed as also permitting the construction of a replacement porch.
10. Whilst Article 3 of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO) grants planning permission for porches that meet certain criteria, an Article 4 Direction has been made which makes the GPDO permission inapplicable in this case. As the Council has not granted planning permission for the porch, it follows that it does not have planning permission and therefore represents a breach of planning control. The appeal on ground (c) cannot succeed.

Appeal on ground (a)

Main issue

11. The main issue in this case is the effect on the host property and whether or not the porch preserves or enhances the character or appearance the CA within which the property is located.

Planning policy

12. The development plan includes the Brighton and Hove Local Plan 2005. The most relevant policies are LP Policies QD14 and HE6. Policy QD14 requires that extensions are well designed and detailed in relation to the property to be extended, the adjoining properties and the surrounding area. Policy HE6 requires that proposals within a CA preserve or enhance its character or appearance.
13. Paragraph 215 of the National Planning Policy Framework (the Framework) advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. I find no significant conflict with the Framework in respect of any of the development plan policies cited in this case. I will therefore give them full weight insofar as they are relevant to the appeal.

Reasons

14. The appeal site is within the North Laine Conservation Area (CA). The CA comprises a mix of land uses including shops and residential. Building heights vary generally between 2-3 storeys. Most of the buildings date from the 19th Century with a number of 18th Century buildings as well. The dominant materials within the CA are painted render and slate roofs.
15. Buildings on the east side of Kensington Place comprise a uniform terrace, fronting directly onto the road, with small lightwells to the basements. Those on the west side of the road, were developed earlier, and are generally set behind small front gardens. The west side buildings have some design differences from one another and comprise a series of small terraced and individual developments. The general scale and architecture, as well as use of render and hung sash windows and other formal architectural features, unite the western side of the road and result in a cohesive appearance.
16. A number of porches have been erected in the past, prior to the Article 4(2) Direction, on the west side of Kensington Place in a variety of architectural forms and there is no dominant type of porch design. The previous porch at No 14 was simple and low key, albeit it was not particularly attractive. However, the porch the subject of the notice is visually top heavy with a large lead detailed flat roof. It also appears to extend closer to the string course, which is likely to be due to the increased bulk of the roof compared to the previous porch roof. However, I accept that the leadwork colour will weather in time.
17. Whilst the appellant states that the porch was constructed on the footprint of the previous porch, the photographs show that the porch and the leadwork in particular are bulkier than that of the previous porch and there is less space between the top of the porch and the string course on the front elevation of the host property. This reduction in space between the porch roof and the string course results in an awkward relationship and detracts from the simplicity of the style of the front elevation. Furthermore, the lead detailing and general roof structure fails to respect the character and appearance of the host building. The replacement porch appears as a top heavy and unsympathetic design at the front of the property which is prominent in the street scene. As such, I find that it detracts from the character and appearance of the host

property and harms the character and appearance of the North Laine Conservation Area. This is contrary to LP Policies QD14 and HE6.

Appeal on ground (f)

18. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (section 173(4)(a)) is to remedy the breach of planning control which has occurred. The second (section 173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In the notice, the subject of this appeal, the Council has not, unfortunately, specifically indicated which of those two purposes it seeks to achieve.
19. The reason for issuing the notice concerns the effect of the porch on the host property and the CA. However, because the notice requires the porch to be removed rather than seeking a reduction in the size of the porch or an alteration to its design to address the adverse effect on the amenity of the area, the purpose of the notice must be to remedy the breach of planning control by restoring the land to its condition before the breach took place ((section 173(4)(a)). The evidence is clear that in August 2012 the previous porch had been demolished and the porch the subject of the notice is a new porch. Thus, the requirement is to remove the porch.
20. The appellant states that the renewed porch is the same footprint and covers the same door opening. She also states that the only real difference is the lead that has been used to create an upstand to the edge over the door which could be removed. It is stated that the lead flashing is fixed to the same chase in the house wall. No other lesser steps are put forward by the appellant.
21. In my view, the removal of the upstand would not result in a sympathetic porch design and would therefore not overcome the harm that I have identified above. The photographs and what I saw on site, show that even if chased in at the same point it has, somehow, resulted in a bulkier form than the porch which previously existed. The requirements of the notice are not in my view excessive and the lesser steps put forward by the appellant would not overcome the objections to it. As such, the appeal on ground (f) fails.

Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal decision

23. 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.

Hilda Higenbottam

Inspector