Appeal Decisions

Site visit made on 1 February 2010

by A J Bingham TD Dipl Arch ARIBA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
17 February 2010

Appeal A Ref: APP/Q1445/C/09/2113070
Land at 96 Waldegrave Road, Brighton, East Sussex BN1 6GG

- 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 Dr Juan I Baeza against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is: 2009/0201.
- The notice was issued on 24 August 2009.
- The breach of planning control as alleged in the notice is: *"Without planning permission a cycle storage shed of timber construction to the front garden area of the property was erected"*.
- The requirements of the notice are: *"Remove the storage shed from the front garden of the property known as 96 Waldegrave Road, Brighton"*.
- The period for compliance with the requirements is: *"28 days"*.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

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

Appeal B Ref: APP/Q1445/C/09/2113071
Land at 96 Waldegrave Road, Brighton, East Sussex BN1 6GG

- 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 Ms Deborah Collis against the same enforcement notice the subject of Appeal A.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (c) 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.

Application for costs

1. An application for costs was made by Dr Juan I Baeza against the Brighton and Hove City Council. This application is the subject of a separate Decision.

Appeals A and B the appeals on ground (c)

2. The Appellants assert, with support from appeal decisions elsewhere and from legal precedents, that the structure, the subject of the enforcement notice, does not constitute operational development as defined by Section 55 of the 1990 Act. They point to two arguments to counter the allegation that building

operations have occurred. Firstly, it is claimed that the subject structure is too small to be of any practical significance; secondly, mention is made of the three part test established by the Courts to assess whether what has occurred is a building operation based on examination of its size, permanence and physical attachment.

3. The Council expresses the view that the subject structure comprises development within the definition given in Section 55 of the Act in which case a breach of planning control has occurred as a matter of fact. The Council has arrived at this view after having considered the matter against the three part test referred to by the Appellants arising from the legal precedent C*ardiff Rating Authority v Guest Keen and Baldwin [1949] 1KB 385*. In the presentation of its case the Council also refers to an Article 4 Direction which is in force on land that includes the appeal site, but insofar as the cycle storage shed is positioned in the front garden of the appeal property the provisions of the Direction have no direct bearing on the matter in hand.

4. I turn firstly to the Appellant's argument that the structure is *de minimis* in planning terms, being too small to be of any practical significance. I reject this argument for reasons given in my consideration of the ground (a) appeal made under Appeal A.

5. Secondly, the three part test referred to by the parties falls to be applied to the case in hand. On the matter of size, which is a relative term, the Appellants give the dimensions of the subject structure as 2.1m in length, 1.0 m in width and 1.2 m in height. It is not a conventional walk-in shed, nevertheless it needs to be considered in the context the garden area in which it is sited. The front garden of the appeal property is not generous being about 4.25 m deep and 5.0 m wide. The storage shed covers some 10% of this front garden area. In view of this degree of coverage, and with regard to its height, it is my opinion that the storage shed is a relatively sizeable structure when seen in its setting.

6. Turning to the matter of permanence, although the Appellants argue that the storage shed is capable of being moved by two people, it seems to me that its removal would not be easily accomplished. Even its removal from time to time would not necessarily denote lack of permanence as illustrated by the judgement made in the case *Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions [2006] JPL 1025* concerning the erection and dismantling of a marquee.

7. Despite the size of the storage shed, or perhaps because of its size, and in recognition that timber is a relatively dense material it is my opinion that substantial manpower would be required to achieve manual lifting. In any case, such a lifting operation would not shift the base that forms part of the structure. Moreover, the suggestion that the structure could be easily moved negates the Appellant's argument that the shed provides a secure storage facility. More to the point is the fact that it appears the intention is for the storage shed to be permanently sited on the land for the use of the Appellants, and possibly for any subsequent occupiers of the appeal property. The claim that the storage shed can be dismantled in 30 minutes and reassembled in 4 hours does not have any bearing on the apparent intention to keep it permanently on the appeal site.

8. Finally, the matter of physical attachment to the ground falls to be considered. In relation to this matter the Appellants state that the storage shed: *"does not have a foundation; is not physically affixed to the ground; rests on six paving slabs"*. From information volunteered during my site visit, the Appellants believe that the paving slabs are each 600 mm by 600 mm in area. At my inspection it was not possible to see what had been done below the sheet material that forms the floor of the structure. Nevertheless, it appears that the surface of the site has been prepared to provide a level plane. Following that procedure, six paving slabs have been placed to support the timber framed structure, which as a consequence does not rest directly on the ground. In my opinion, despite the Appellant's contrary view, these paving slabs, which together cover land equal to almost 50% of the floor area of the storage shed, form a foundation for it.

9. The paving slabs clearly do not equate to a foundation for a building such as the house at the appeal site, neither do they need to. However, they are sufficient to provide support for the storage shed and are most likely necessary to prevent the structure from settling into the top soil that surrounds it. The storage shed may not be fixed to the paving slabs, but insofar as the paving slabs are part and parcel of the structure which have been placed in the ground, I consider that the structure is physically attached to the ground. For this reason I draw a distinction between the storage shed at the site and an entity such as a Portakabin or shipping container that has been placed on the ground.

10. On the basis of my foregoing conclusions I consider that the structure, the subject of the enforcement notice, is development as defined by Section 55 of the Act. As such, in view of the fact that it does not comprise permitted development under Class E of Part 1 of the Schedule to the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008, I find that its erection constitutes a breach of planning control as alleged in the notice. Accordingly. The appeal on ground (c) fails.

Appeal A, the appeal on ground (a) and the deemed planning application

Main issue

11. In recognition of the fact that the appeal site lies in the Preston Park Conservation Area, and having regard to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the main issue on which a decision turns is whether or not the unauthorised development preserves the appearance of the conservation area.

Reasons for the decision

12. Preston Park Conservation Area lies some 2.5 km north-west of the centre of Brighton. It is extensive in area, largely comprising housing developments of 19th century origin. Waldegrave Road is typical of development in the southern section of the conservation area, with the part of this highway that includes the appeal site presenting continuous terraces of 2-storey houses to both sides of the road, which forms part of an orderly pattern of parallel streets. The houses, with stuccoed and painted façades, lie behind shallow front gardens enclosed by walls. Development in the vicinity of the appeal site appears to stand largely unaltered since its completion.

13. The storage shed, occupying garden land some 350 mm above the level of the adjacent public footway, has introduced an alien feature into the local street scenes, the prominence of which is accentuated by its elevated position. In view of its size, a matter examined in paragraph 5 (above), I am not persuaded that it is too small to be of any practical significance in planning terms. It is an element that takes no reference from the architectural style of the terraced house in the immediate area. Its mass, rectilinear shape and absence of detail or embellishment render it incongruous in its setting.

14. Similarly, and despite the attempt to paint the storage shed in a colour to match the house at the site, its materials consisting of horizontal shiplap timber boarding and a roof covering of what appears to be a bitumen based black coloured roofing felt are inappropriate to the character and appearance of the house at the site in particular and neighbouring development in general. I reject the notion that the timber boarding *"mirrors"* the wooden window frames of the building at the site.

15. The Appellant claims, with support from representations submitted by neighbouring residents, that the storage shed has an acceptable impact on the street scene and the conservation area, but I disagree. His assertion that the shrubs planted behind the low front garden wall of the appeal property screen the storage shed from view is unfounded. The shrubs are small and even with time I doubt whether they would provide adequate screening as there is insufficient space between the storage shed and the front garden wall of the appeal property to enable some of the planting to become sufficiently established.

16. At the time of my inspection, owing in part to its elevated position, the storage shed was discernible from points on the opposite side of Waldegrave Road some 25 m and 30 m to the north and south of the site respectively. Moreover, despite the shrubs that have been planted, from the immediate site frontage the storage shed is particularly noticeable. From this vantage point it conceals the view of a significant part of the canted bay window in the façade of the house at the site. It obscures the sill and other detail from sight to the detriment of the appearance of that house and presents a view untypical of the remainder of other houses in the terrace. Furthermore, despite the support from local residents, and acknowledging that there is one letter of objection, the totality of this correspondence confirms that the storage shed is visible in the street scene.

17. In the light of my foregoing criticisms I find the cycle storage shed unacceptable in that it does not preserve the appearance of the Preston Park Conservation Area. As such the storage shed fails to accord with saved Policy HE6 of the adopted Brighton and Hove Local Plan July 2005 which provides for the protection of conservation areas. It is also noncompliant with saved Policies QD1 and QD2 which are specific to the quality of the design of development proposals.

18. In my opinion, the safeguarding of the appearance of the conservation area is the overriding consideration. I do not dispute the importance of those national and local planning policies relied on by the Appellant concerning the encouragement of cycling as a sustainable means of transport, but I do not accept that they outweigh the policy provisions that provide for the protection

of the conservation area. In any case, compliance with the requirements of the enforcement notice would not necessitate cessation of cycling by the Appellant and his family, but I accept that it may require reversion to the former less convenient situation where bicycles need to be taken through the house for storage in the back garden.

Conclusions

19. For the above reasons, and having regard to all the other matters raised, including the various appeal decisions relied on by the parties and the Appellant's criticism of car parking and the standing of wheelie bins on the public highways in the conservation area, I conclude that neither the appeals made on ground (c) nor the appeal made on ground (a) should succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

Formal decision

20. I dismiss the appeal, 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.

A J Bingham
Inspector