



# Appeal Decision

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](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**17 February 2010**

## Appeal Ref: APP/Q1445/C/09/2113921

### Land at 95 Trafalgar Street, Brighton, East Sussex BN1 4ER

- 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 Bank Machine Limited against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is: 2007/0138.
- The notice was issued on: 7 September 2009.
- The breach of planning control as alleged in the notice is: "*Without planning permission the installation within and alteration to shopfront as follows:*
  - a. *Installation of an Automated Teller Machine (ATM).*
  - b. *Insertion of a vertical mullion and white panelling.*
  - c. *Installation of a roller shutter with box housing and guiderails.*
  - d. *Installation of an internally illuminated box sign for the ATM.*
  - e. *Installation of a receipt or litter box for use by ATM customers*".
- The requirements of the notice are:
  - "1. *Remove the Automated Teller Machine (ATM) from the shopfront.*
  - 2. *Remove the vertical mullion and white panelling and restore the shopfront to that which existed prior to the installation of the ATM.*
  - 3. *Remove the roller shutter grille, box housing and shutter guide rails from the shopfront together with any associated fixings.*
  - 4. *Remove the internally illuminated box signs for the ATM from the shopfront.*
  - 5. *Remove the ATM receipt or litter box from the front of the shopfront*".
- The period for compliance with the requirements is: "*Three months*".
- The appeal is proceeding on the grounds set out in Section 174(2)(f) 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. The allegation in and the requirements of the notice in respect of that part of the allegation at sub-section c and requirement numbered 3 differ to a minor extent in their terminology and it seems to me that they should relate as closely as possible one to the other. Accordingly, I propose to correct the notice in order that these two elements of the notice directly relate to each other.

### Procedural matter

2. Both parties to the appeal have submitted full appeal statements, but in view of the fact that the deemed planning application does not fall to be considered for the reasons given above, I am not in a position to have regard to the

planning merits of the development, the subject of the notice, including any inferred need for it. The appeal site lies in the North Laine Conservation Area and in the determination of this appeal I am required to have regard to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, insofar as the planning merits of the subject development do not fall to be considered I point to the observations concerning the impact of development on the conservation area made by the Inspector who determined the Section 78 appeal (Ref: APP/Q1445/A/08/2082141, dated 26 January 2009) relating to the installation of an ATM at the appeal premises.

### **The appeal on ground (f)**

3. The Appellants contend that the requirements of the notice are excessive in that they are liaising with the Council for the purpose of agreeing a revised design for the shopfront which accords with the Council's planning policies and addresses the criticisms made by the Inspector who determined the above-mentioned appeal. In view of this the Appellants request that the Council withholds enforcement action to allow it to make a decision on an application for planning permission for the revised design which has been commissioned from a local architect.
4. For its part, the Council makes criticisms of the unauthorised development, and points to its refusal of consent for the display of the illuminated sign included in the notice. These matters have led the Council to conclude that the development is unacceptable in which case the requirements of the notice are not excessive and only go as far as necessary for the purpose of remedying the identified breach of planning control.
5. The Council acknowledges the fact that negotiations concerning a revised scheme for the site are on-going, and agrees that an acceptable scheme may ultimately result, but at the present time there is no guarantee that the matter will be satisfactorily resolved. There is acceptance by the Council that should an application for a new shopfront be made, subject to negotiation with the Appellants, it would be reasonable to withhold enforcement action until such time as the application is determined. However, the Council points out that at the time of submission of its appeal statement on 16 November 2009 no planning application had been made by the Appellants.
6. Apart from mention of a revised scheme, and provision of associated illustrative drawings, no physical alterations to the unauthorised development to define any lesser steps that would overcome the objections to it have been included in the grounds of appeal or the Appellant's appeal statement. I say this in the knowledge that it appears to me that the illustrative scheme submitted by the Appellants would not constitute lesser steps but amounts to a major reconfiguration of the shopfront.
7. As the matter stands, the representations made in the ground (f) appeal appear to be more related to an appeal on ground (g) in that the appeal effectively seeks an extension of time for compliance with the requirements of the notice. The problem I have with this is that no finite period is specified, with the grounds of appeal suggesting an open ended period to coincide with determination of an application for planning permission, the submission date of

which is unknown to me. Moreover, I am not in a position to anticipate the decision the Council will make on any future planning application.

8. However, I recognise that Section 173A(1)(b) of the Act as amended enables a local planning authority to relax any requirements of a notice, and in particular may extend any period specified for its compliance. In the circumstances of this case it seems to me that it would be unreasonable for the Council to require compliance with the notice on expiration of the period for compliance given in the notice when there is the prospect of securing an acceptable alternative to the unauthorised development.
9. In view of this I propose to dismiss the appeal in the expectation that the Council will exercise its discretion to operate within the provisions of Section 173A(1)(b) of the Act for the purpose of extending the period for compliance with the notice to allow sufficient time for the Appellants to submit an application for the installation of a new shopfront and for that application to be determined. It will be a matter for the Council to decide on any further action following determination of that application.

### **Conclusions**

10. For the reasons given above, and having regard to all the other matters raised, I conclude that with the likely safeguard afforded by Section 173A(1)(b) of the Act the appeal should not succeed. I shall dismiss the appeal and uphold the enforcement notice with corrections.

### **Formal decision**

11. I direct the enforcement notice be corrected by:
  - a. deletion of the word "*guiderails*" from sub-paragraph c. of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED; and substitution therefor of the words "*guide rails*".
  - b. Insertion of the word "*shutter*" after the words "*housing and*" into sub-paragraph c. of paragraph 3 under the heading THE BREACH OF PLANNING CONTROL ALLEGED;
  - c. deletion of the word "*grille*" from sub-paragraph 3. of paragraph 5 under the heading WHAT YOU ARE REQUIRED TO DO.
12. Subject to these corrections, I dismiss the appeal and uphold the enforcement notice.

*A J Bingham*

Inspector

