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# Appeal Decision

Site visit made on 24 November 2010

**by Graham Self MA MSc FRTPI**

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

**Decision date: 7 December 2010**

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## **Appeal reference: APP/Q1445/C/10/2133994 Land at 24 Walpole Terrace, Brighton BN2 0ED**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Brighton and Hove City Council.
- The appeal purported to be made by: The Company Secretary, Drivemanor Ltd (but see paragraphs 1 and 2 below).
- The City Council's reference is 2009/0196.
- The notice was issued on 1 July 2010.
- The breach of planning control as alleged in the notice is: "Without planning permission unauthorised installation of UPVC windows to front elevation.
- The requirements of the notice are:
  1. Remove all of the UPVC windows at the front elevation of the property.
  2. Install painted timber box sash vertically sliding windows to all window openings on the front elevation. The proportions of the windows and the external joinery dimensions and details, including horns to the meeting rails, must match those of the adjoining property, number 23 Walpole Terrace.
- The period for compliance is 20 weeks.
- The appeal was made 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 has lapsed.

**Summary of decision: The enforcement notice is varied. The appeal is dismissed and the enforcement notice is upheld as varied.**

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### **Identity of Appellant**

1. The appeal was lodged by an agent, who specified the appellant as: "The Company Secretary Drivemanor Limited". Therefore that is how the appellant has been identified in subsequent correspondence by the Planning Inspectorate and by the City Council. However, the later statement submitted for the appellant is headed "Appeal Statement Prepared on behalf of Drivemanor Limited".
2. I suspect that the company secretary of Drivemanor Ltd had, and has, no right of appeal against the enforcement notice, as he or she (who as an individual

will be a different legal entity from the company) is apparently neither the owner of the appeal property nor an occupier by virtue of a licence. So I have considered the possibility that there is no valid appeal before me. However, it would be reasonable to assume that the appeal was meant to be made by Drivemanor Ltd. I am therefore treating the appeal on that basis.

### **Ground (f)**

3. Under ground (f), it is claimed that the requirements of the enforcement notice are excessive.
4. The essence of the appellant's case on ground (f) is that the non-openable windows in the front elevation should be retained and that the openable windows could be replaced by uPVC sliding sash windows, in line with an application for planning permission which has been the subject of negotiation with the council. The appellant has suggested revised wording for the enforcement notice requirements, under which step 1 (the removal of windows) would only apply to the windows which can be opened, and step 2 (replacement) would be changed in two ways: first, allowing either timber sash windows or uPVC sash windows to be installed in place of the windows which can be opened; second, specifying that the details such as joinery dimensions must "closely match" (instead of "match" as in the council's notice) those of the adjoining property.
5. The appellant's case is legally flawed, for three main reasons.
6. First, the use of the words "closely match" would make the requirements imprecise and would introduce too much scope for disagreement. Therefore an attempt to adopt the approach sought by the appellant would make the enforcement notice either invalid or a nullity. At the same time, retaining the "match" requirement whilst allowing the use of uPVC material would be unworkably inconsistent, because this material would not provide matching joinery details.
7. The only really reliable way of precisely specifying proposed works such as installing windows is to have suitably detailed specifications, usually by means of plans or drawings of what is proposed. Presumably such drawings have been submitted as part of the planning application which I understand was made in August 2010 and has yet to be decided.
8. Second, the difficulties just mentioned reflect the fact that the appellant is trying to use a ground (f) appeal to obtain what would be tantamount to a planning permission, but without having pleaded ground (a) and in a situation where the deemed application for permission has lapsed because of non-payment of the fees. Much of the appellant's case is concerned with "planning merits" – for example, it is argued that the uPVC windows which the appellant seeks to install would not harm the conservation area, and would not be different to other windows in the terrace. But "planning merits" arguments would more properly be directed at an appeal on ground (a) and a related deemed application.
9. Third, the requirements of this enforcement notice derive from Section 173(4)(a) and not from Section 173(4)(b). That is to say, the notice seeks to remedy the breach of planning control by restoring the land to its condition

before the breach took place, not the alternative of “under-enforcing” so as to mitigate or remedy injury to amenity. In these circumstances an appeal made under Section 174(2)(f) can only claim that the steps exceed what is necessary to restore the land to its condition before the breach took place.<sup>1</sup>

10. Boiled down to basics, the breach of control is the installation of the unauthorised windows, and all that is required to put matters right is the removal of the windows. Normal market forces should ensure that such removal would be immediately followed by replacement, by whatever windows have by then been approved by the planning authority.
11. Taking into account the points mentioned above and allowing for the limited scope of the ground (f) appeal, I have decided to delete the whole of step 2 from the requirements of the enforcement notice, leaving step 1 unaltered.

### **Ground (g)**

12. Ground (g) concerns the period for compliance. I do not see any justification for an extension as sought by the appellant. Quite lengthy negotiations have apparently already taken place between the appellant’s agent and the council, and there is no good reason to believe that allowing another 40 weeks (or nearly ten months) is now needed for compliance or would enable anything more useful to be achieved. If the council do agree to the retention of some of the windows, a permission to that effect would partly override the requirements of the notice; but that remains a matter for the council, and since I am not dealing with any deemed application I make no comment on the merits or demerits of any such scheme.
13. The 20 week compliance period should be enough for the appellant to decide what to do, to obtain whatever permission may be needed from the council and to engage contractors. This outcome will still leave the council with control over replacement windows (unless the appellant company opts to leave the property windowless, which is most unlikely as explained above). The compliance period will not allow time for completion of any appeal against a refusal or non-determination of the undecided application, but there is no injustice in this, especially as the varied enforcement notice is less onerous than it was originally. I conclude that ground (g) does not succeed.

### **Formal Decision**

14. I direct that the enforcement notice be varied by deleting Step 2 from the requirements. Subject to that variation, I dismiss the appeal and uphold the enforcement notice as varied.

*G F Self*

Inspector

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<sup>1</sup> The words “as the case may be” in Section 174(2)(f) are relevant here. They refer back to Section 173 (4).

