



Appeal Decision

Hearing held on 20 December 2010

Site visit made on 20 December 2010

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 12 January 2011

Appeal Ref: APP/Q1445/C/10/2137498

124 Elm Grove, Brighton BN2 3DB

- 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 R M Payne against an enforcement notice issued by Brighton & Hove City Council.
 - The Council's reference 2008/0105
 - The notice was issued on 26 August 2010.
 - The breach of planning control as alleged in the notice is the installation of residential style upvc windows and the infilling of the shop-front in brick.
 - The requirements of the notice are 1) restore the building to its former state (For the avoidance of doubt a scaled drawing numbered 2608.01 and dated April 08 showing the building before the unauthorised development was carried out, showing the 'former state' of the building, is attached to the enforcement notice as appendix EB1) and 2) the window frames shown on the drawing attached to the enforcement notice are timber framed and as such, timber framed windows identical to the dimensions, scale and joinery details shown on the plan are to be replicated.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (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.
-

Decision

1. I dismiss the appeal and uphold the enforcement notice.

Reasons

Ground (c)

2. The building is a mixed residential / retail use and therefore there is no permitted development that would cover the insertion of windows and bricking up of the shop-front.
3. Section 55 (1) of the Town and Country Planning Act 1990 notes that subject to various provisions, except where the context otherwise requires, "development," means the carrying out of building or other operations in, on, over or under land. This includes structural alteration of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. In paragraph (2) it notes that various operations shall not be taken for the purposes of this Act to involve development of the land, which includes the carrying out of maintenance, improvement or other

alteration of any building that affect only the interior of the building, or do not materially affect the external appearance of the building.

4. In this case the works are structural alterations and additions to the building that would normally be undertaken by a person carrying out business as a builder. The changes to the appearance of the windows and removal of the shop-front have had a significant and material effect on the external appearance of the building. I therefore conclude that the operational development identified in the notice is development that requires planning permission. The appeal on ground (c) fails.

Ground (f)

5. The appellant has applied for and received planning permission for a new shop-front. This has a condition requiring that the permission must be commenced within three years of it being granted. However, planning permissions and enforcement notices are different and have different aims. While the appellant may implement the planning permission within three years, there is no mandatory requirement to do so, and the permission could expire without rectification of the harm that has been identified by the council.
6. Even if the appellant commenced the development within the 3 year period, it would be difficult under the planning permission to enforce a particular time scale for completion. The enforcement notice allows the council to ensure that the harm identified is rectified in a reasonable time, so it is necessary that the council should issue the enforcement notice and that it should run alongside the extant planning permission.
7. While I sympathise with the appellant's financial position and that his wife is ill, it is important that the harm that has been caused to the building is rectified. The council has allowed 6 months for this work and this should allow adequate time for the appellant to make suitable arrangements and take appropriate action to rectify the harm that has been caused to the building and does not indicate that the requirements are unreasonable. I conclude that the requirements are not excessive and the appeal fails on ground (f).

Graham Dudley