The Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2011

by K Nield BSc(Econ) DipTP CDipAF MRTPI

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

Decision date: 6 December 2011

Appeal Ref: APP/Q1445/C/11/2154476
Land at 1 Carlisle Road, Hove, Sussex, BN3 4FP

- 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 Mrs Iman El-Rayes against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2010/0472.
- The notice was issued on 9 May 2011.
- The breach of planning control as alleged in the notice is without planning permission the placing of a shipping container ("the Shipping Container") in the rear garden of the Land.
- The requirements of the notice are to remove the Shipping Container from the Land.
- The period for compliance with the requirements is one calendar month after the notice takes effect.
- 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 with correction.

Preliminary matters

1. There is no dispute that a storage unit has been placed in the rear garden of the above property. However, the appellant contends that the use of the term "shipping container" in the notice and any implied commercial use thereof is incorrect. She describes the storage unit as "a reused white plastisol finished portable secure storage unit with end access". I agree that that provides a full description of the storage unit. It is clear from the submissions from both parties that the Council's description has caused no confusion as to the alleged breach that is attacked by the notice and the appellant understands the purpose of the notice. I can correct the notice without injustice and I shall do so. For descriptive purposes in this decision and in the corrections required to the notice I shall refer to it as a "secure storage unit".

2. The appellant points out that the notice does not state whether the Council considers the alleged breach is operational development or a material change of use of the Land. However, the notice states at paragraph 4.1 that it appears to the Council that the alleged breach "has occurred within the last four years". On that basis it is clear to me that the Council regards the secure storage unit as operational development to which the "four year" time limit applies. The appellant has provided submissions which in part deal with the secure storage unit on the basis that it may be considered as operational development and I shall also consider the alleged breach on that basis.

3. A further matter raised by the appellant in respect of the notice concerns the stated reasons for issuing the notice. The appellant states that the notice gives no precise indication as to how harm arises from the Council's reason (for issuing the notice) that the alleged development is contrary to LP[1] policy QD27 (Protection of Amenity). However, the appeal was submitted by a professional town planning consultant who quotes the policy in the appellant's written statement. The Council's reasons for issuing the notice and its case were explained in more detail in its statement which was sent to the agent on 1 August 2011 requesting any comments on the points raised by 17 August 2011. No further comments were received by that date. Taking all the above matters into consideration I do not consider that the appellant has suffered injustice through the Council not providing further explanation of its reasons for issuing the enforcement notice.

The appeal on ground (c)

4. To be successful on a ground (c) appeal the appellant must show that, on the balance of probabilities, the placing of the secure storage unit on the Land does not constitute a breach of planning control.

5. The appellant contends that the secure storage unit is a chattel placed on the land and does not constitute development because it is neither a building nor a structure nor has it resulted in a material change in the use of the Land. To support that contention the appellant argues that the unit is sufficiently small that it has been brought onto the site ready made, that it could be removed without pulling it down or taking it to pieces and it is not physically attached to the ground and therefore is not permanent. The Council, in response, refers to a number of appeal decisions which it claims support its view that the placing of the secure storage unit on the Land is development.

6. The use of secure storage units and containers as portable buildings is generally regarded as a building operation however this is dependent on a fact and degree assessment in each case. I noted at my visit that the secure storage unit by virtue of its size had a degree of permanence and was likely to require special lifting apparatus to be moved from its site. Although there was no indication that it was affixed to the ground its weight alone would provide a reasonable degree of physical attachment. Taking these matters into consideration I am satisfied that the secure storage unit, as a matter of fact and degree, should be regarded as a building, within the definition provided in the Act[2], to which a four-year rule should apply.

7. In an alternative argument the appellant states that if the secure storage unit is regarded as a building it should be considered as permitted development under Class E of Part 1 of Schedule 2 of the GPDO[3] which permits specified types of development within the curtilage of a dwellinghouse. However, a "dwellinghouse" as defined in the GPDO[4] "*does not include a building containing one or more flats, or a flat contained within such a building*". As the host building is divided into a number of flats it does not benefit from permitted development rights under Class E. Consequently I do not accept the appellant's contentions in this regard.

[1] Brighton and Hove Local Plan 2005 (LP)
[2] S336 of the Town and Country Planning Act 1990
[3] Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008
[4] GPDO: Citation, commencement and interpretation: Paragraph 1

8. Taking all the above matters into consideration I conclude on the balance of probabilities the placing of the secure storage unit on the Land does constitute a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a)

Main issues

9. The main issues in the appeal are, firstly, the effect of the retention of the secure storage unit on the character and appearance of the locality and, secondly, the effect on the living conditions of occupants of the host property and No 3 Carlisle Road through potential enclosure and loss of outlook and on the provision of private amenity space.

Character and appearance

10. The locality of the appeal site is characterised by substantial blocks of flats and substantial semi-detached dwellings along both sides of Carlisle Road, some of which have been divided into flats, as is the case with the host property.

11. The secure storage unit has been positioned in the rear amenity area of the flats. It is sizeable both in height and bulk and is partly visible from the public domain of Carlisle Road although the lower part is screened by a boundary wall to the plot. Intervening buildings screen views of the secure storage unit from the public domain of Walsingham Road to the east. Nevertheless, due to its size and appearance the secure storage unit is out of context with the design and appearance of the host building and it diminishes the overall character of the residential area in conflict with the aims of LP policy QD27 (Protection of Amenity) and the design aims of PPS3[5].

Living conditions

12. The secure storage unit is positioned a short distance away from a window to a ground floor flat. It reduces the outlook from that window and would contribute to a feeling of enclosure of that room. Whilst the harm would be limited there is nevertheless conflict with the aims of LP policy QD27. I do not consider that it would be harmful to the living conditions of occupants of other flats within 1 Carlisle Road or to occupants of dwellings in Walsingham Road which have windows that overlook the appeal site.

13. The secure storage unit reduces the amenity space available for use by occupants of the flats although I noted at my visit that the rear area was only accessible from a ground floor flat. I have no doubt that occupants of the flats have varying requirements for outdoor amenity space and as a reasonable outdoor area is retained I do not consider that the reduction in amenity space that has occurred would in itself be materially harmful to the living conditions of occupants of the flats.

14. Notwithstanding the effect on the amenity space I conclude on this issue that the appeal scheme causes limited harm to the living conditions of the occupants of a ground floor flat at 1 Carlisle Road through enclosure and loss of outlook in conflict with LP policy QD27.

[5] Planning Policy Statement 3: Housing (PPS3)

Conclusion on the ground (a) appeal

15. I have found that the retention of the disputed secure storage unit would have a harmful effect on the character and appearance of the locality and, to a limited degree, the living conditions of the occupants of a ground floor flat at 1 Carlisle Road. Taken together these provide compelling reasons that the appeal should not succeed.

16. For the reasons given above and having regard to all other matters raised, I conclude that the appeal on ground (a) should fail.

Formal decision

17. I direct that the enforcement notice be corrected by the following:

    (i) the deletion from paragraph 3 of the words "shipping container" and the substitution therefor of the words "secure storage unit",

    (ii) the deletion from paragraph 4 of the words "shipping container" and the substitution therefor of the words "secure storage unit", and

    (iii) the deletion from paragraph 5 of the words "a shipping container" and the substitution therefor of the words "secure storage unit".

18. Subject to the above corrections I dismiss the appeal and uphold the notice.

Kevin Nield

INSPECTOR