



Appeal Decisions

Hearing held on 6 August 2013

Site visit made on 6 August 2013

by Simon Hand MA

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

Decision date: 15 August 2013

Appeal A: APP/Q1445/C/13/2193227

Land at 115 Carden Hill, Brighton, BN1 8DA

- 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 Gabriel & Marina Gutierrez against an enforcement notice issued by Brighton & Hove City Council.
 - The Council's reference is 2193228.
 - The notice was issued on 25 January 2013.
 - The breach of planning control as alleged in the notice is without planning permission, the creation of a raised hardstanding area at the front of the property.
 - The requirements of the notice are to remove the raised brick hardstanding from the land at the front of the property.
 - The period for compliance with the requirements is 6 Months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (e) 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.
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Appeal B: APP/Q1445/C/13/2193228

Land at 115 Carden Hill, Brighton, BN1 8DA

- 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 Gabriel & Marina Gutierrez against an enforcement notice issued by Brighton & Hove City Council.
 - An identical appeal to A has been registered.
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Appeal C: APP/Q1445/X/13/2197527

Land at 115 Carden Hill, Brighton, BN1 8DA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Gabriel & Marina Gutierrez against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/00096, dated 17 December 2012, was refused by notice dated 3 April 2013.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is porous hard surface within the curtilage of the dwelling house coloured pink on submitted drawings.
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Decisions

Appeals A & B

1. The enforcement notice is varied by deleting paragraph 1 of section 3 (What you are required to do) and replacing it with "Remove the hardstanding, brick retaining walls, infill and any other materials so that the land is returned to the profile shown in plans 1 and 2 "Pre-car parking:Existing" dated 3.5.11 amended 5.9.11. Copies of which are attached to this notice". Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Appeal C

2. The appeal is dismissed.

Application for costs

3. At the Hearing an application for costs for Appeal B was made by the Council against the appellants. This application is the subject of a separate Decision.

Appeals A & B

4. 115 Carden Hill is one of a row of houses set down from the road. They have short front gardens which slope steeply down to the base of the houses. Some of these are still just grassy slopes, others have been terraced in some way to create flower beds, but the appeal site, and at least one other house, have larger terraces to provide off-road parking.

The appeal on ground (e)

5. This ground is made up of two parts. That referring to the imprecision in the requirements is dealt with under ground (f). The second argument concerning the correct section of the Act is actually a nullity argument, but for ease I shall deal with it here.
6. The appellant claims the Council have not quoted the actual section of the act that empowers them to attach requirements to the notice. It is true they have not done so, but they are not required to do so. The appellant also claims the notice has not been drafted with sufficient precision, but except for the requirements, the notice seems to me to be perfectly understandable. Neither of these arguments is of any substance and the appeal on ground (e) fails.

The appeal on ground (c)

7. The argument is that a smaller area of hardstanding is permitted development and should be retained. This ground appears to be based on a misunderstanding of the previous appeal Inspector's decision. That decision (APP/Q1445/X/12/2169949 dated 27 November 2012) dealt with an appeal for a lawful development certificate for the parking area which is also the subject of the current notice. The appeal was refused as the works were clearly not permitted development. The Inspector also considered whether separate parts of the development could be considered in isolation from the whole. She concluded they could not. The Garland case from 1968 settled this argument many years ago, (*Garland v MHLG (1968) 20 P & CR 93*). I quote from paragraph 6 of the decision letter; "it is not possible to separate out parts of the development and suggest that those parts are permitted by way of the

GPDO. Either the whole development is permitted by the GPDO or it is not. This follows the line taken in Garland.....that if the whole operation is not permitted then neither is any part of it". It is thus quite clear that part of the hardstanding or the retaining walls cannot be separated out from the whole and considered to be permitted development. The appeal on ground (c) fails.

The appeal on ground (f)

8. The requirements are to remove "the raised brick hardstanding from the land at the front of the property". The hardstanding would appear to be entirely surfaced with gravel. The retaining walls to the side and rear are of brick, with small pillars to the rear and one side supporting a low ornamental metal railing. There will also be a large amount of infill material, used to level off the ground under the hardstanding.
9. I agree with the appellant that the requirements do not make it clear exactly what they have to do. It could be argued the retaining walls and the infill material are not covered by the requirements, and neither is the surfacing material which is not brick. It is also far from clear what the ground should look like once the hardstanding has been removed. Should it be returned to a steep grass slope or to a terraced garden?
10. At the Hearing the Council said they would be happy for the land to be returned to the state it was before the off-road car parking was created. This they agreed was a terrace of some sort. The Council had a plan dated 3 May 2011 showing the garden as it had been. This plan was labelled "Pre-Car parking: Existing". It showed the top terrace to be at street level and to be roughly 2.8m deep. There were two other narrower terraces stepping down to ground level at the base of the house. This had been supplied with a planning application for the hardstanding (as built) and in the Council's view represented the pre-existing landform. That plan, I was informed, had been scaled off a 'Google earth' satellite photograph. After that application, the appellant had done some more research, including digging a hole to discover the whereabouts of the original retaining wall of the street level terrace. Having found this a second plan was produced with an amended date of 5.9.11. This was supplied with the LDC appeal referred to above and accompanied by a sworn statement from Mr Gutierrez that when he had bought the house, back in 1996, the garden had been terraced in the way shown on that plan. The depth of the top terrace measured from the back of the pavement was 3.25m at the end closest to the steps and 3.5m at the other end.
11. After taking advice the Council agreed they were prepared to accept this was the actual position before the larger hardstanding the subject of the notice had been created. On site, this was measured out, and it was clear the new, smaller terrace would be much less dominant, and it was agreed that returning the land to the position shown in the drawing with an amended date of 5.9.11 would be an acceptable solution.
12. I shall therefore vary the notice by deleting the requirement (paragraph 1 of section 3) and replacing it with "Remove the hardstanding, brick retaining walls, infill and any other materials so that the land is returned to the profile shown in plans 1 and 2, "Pre-car parking:Existing" dated 3.5.11 amended 5.9.11. Copies of which are attached to this notice".

13. At the hearing the appellant made it clear they wished to retain what would be the new, smaller, upper terrace as gravelled hardstanding. For obvious reasons, this is not shown on the pre-existing plan, and would involve levelling the top terrace, and building it up at the house end by some 250mm. Although not put in quite these terms, the appellant's argument was that converting the pre-existing top terrace to parking would be permitted development, and so requiring the hardstanding to be removed in its entirety would be excessive. However, the requirement, as amended, follows from the allegation. In other words, only the complete removal of the offending structure sufficient to return the land to its accepted previous profile will satisfy the notice. As there is no ground (a) appeal, the merits of allowing a slightly different outcome, with the smaller area of hardstanding cannot be argued. The notice will be varied as discussed above and this does not allow for the retention of any hardstanding. Such hardstanding may well be installed, if it is indeed permitted development, but whether that is done at a later date or concurrent with the works to satisfy the requirements is a matter for discussion between the appellant and the Council.

Appeal C

14. For the same reasons as for the ground (c) appeal, the appeal for a lawful development certificate is dismissed.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Colin Humphrey ARIBA	Agent
Gabriel Gutierrez	Appellants
Marina Gutierrez	

FOR THE LOCAL PLANNING AUTHORITY:

Robin Hodgetts	Brighton & Hove City Council
Sonia Gillam	

DOCUMENTS

- 1 Plan provided with previous s78 application
- 2 Plan provided with previous LDC application

