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## Appeal Decision

Site visit made on 5 January 2016

**by Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

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

**Decision date: 17 February 2016**

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**Appeal Ref: APP/Q1445/C/15/3128723**

**2 Forest Road, Brighton, BN1 9GP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Daniel Nugent against an enforcement notice issued by Brighton & Hove City Council.
  - The Council's reference is 2014/0222.
  - The notice was issued on 4 June 2015.
  - The breach of planning control as alleged in the notice is "Without planning permission development of the land by the permanent placement of a secure storage container".
  - The requirement of the notice is to remove the secure storage container from the land.
  - The period for compliance with the requirements is 4 weeks after the notice takes effect.
  - The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is dismissed and the enforcement notice is upheld.

### Reasons

2. The appeal is proceeding on ground (f) only and there is no ground (a) or deemed planning application to consider. The basis of ground (f) is that the steps required to comply with the notice are excessive and that lesser steps would remedy the breach of planning control or, as the case may be, the injury to amenity that has been caused by the breach.
  3. The land in question (described by the appellant as being 2a Forest Road) was formerly part of the garden of No.2 but has been separated from it and sold off. The background described by the appellant is that he wishes to build a dwelling on the land for himself and his son, who has special needs, to occupy. When he purchased the land it already had planning permission for a dwelling but this expired in April 2014. He has sought to negotiate with the Council over alternative designs to the one previously permitted but without success. On 26 July 2012 he placed the shipping container across the front of the site to act as a fence during the excavation and also to provide storage space for materials and tools. He says it is not his intention that it remain on the land permanently.
  4. In terms of an alternative requirement to the removal of the container from the land, he is offering to move it from the frontage to a position adjacent to the western boundary with No.2 and to reduce the ground levels so that the top of the container is lower than the top of the boundary fence. He also offers to
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- erect a new wooden fence on the opposite side of the plot similar to those that exist on the other three boundaries.
5. The container as presently sited, which is painted white, is a large highly visible and intrusive feature in the street scene and totally out-of-keeping with its residential surroundings. Due to the slope of the land from south to north it has been propped up on blockwork piers and a timber supports and this exacerbates its dominating influence especially when approaching from Coldean Lane. I agree with the Council and neighbouring objectors that it is an alien feature and an eyesore.
  6. Before addressing the alternative requirements advanced by the appellant it is necessary to consider what purpose it serves and whether this provides reasonable grounds for its retention anyway should the lesser steps be accepted. From what is before me it is not clear what relationship it has with the land and whether it is simply required until, as is hoped for, a new dwelling is constructed. It has been asserted by one objector that the container is being lived in but the appellant denies this arguing that he has a separate apartment elsewhere where he resides. I noted a camper van parked on the driveway when I inspected and there appeared to be an electric cable running from this into the container. I appreciate that this does not mean that the container is being used for residential purposes as the power connection could be for other purposes and I was unable to see inside to draw conclusions on its use.
  7. Nevertheless, even if the container is only used for the storage of materials and tools as claimed by the appellant it is unclear whether this use has any connection with the intended residential development. No such development is taking place and, in the absence of any extant planning permission to construct a dwelling following the expiry of an earlier permission in April 2014, there is no permitted development right for the stationing of moveable structures on the land connected with construction works. From what is before me I am therefore unconvinced of any genuine need to retain the container on the land to serve a legitimate use or purpose. I have noted the particular needs of his son which are explained in detail. Whilst I have no reason to doubt his dependency on appropriate care and housing and the support of his father this is not provided for by the retention of the container on the land. This being the case it is reasonable and not excessive for the Council to require the removal of the container from the land to remedy the breach.
  8. Notwithstanding this conclusion, I have gone on to consider whether the lesser steps described by the appellant would remedy any injury to amenity that has been caused. I accept that moving the container away from the frontage would lessen its visual impact but, given its size and the sharply sloping nature of the ground, I am not convinced that it would overcome the harm caused. In the absence of detailed sections showing the existing and proposed ground levels it is not possible to accurately gauge the impact but I would expect it to still be significant. It could also have a harmful effect on the garden of the No.2 leading to possible instability if the degree of excavation was considerable as would seem likely if the container was to be cut in to the ground so as to be below the top of the boundary fence. For these reasons I do not consider that the alternative steps advocated would remedy the injury to amenity that has been caused by the breach.

9. Drawing these findings together, I consider that it is not excessive for Council to require the removal of the container from the land to remedy the breach given its unacceptable visual impact on the residential area and in the absence of any clear justification for it being there. I also conclude that the lesser steps put forward by the appellant would not overcome the injury to amenity that has arisen. Accordingly, for these reasons I consider that the appeal should not succeed.

*N P Freeman*

INSPECTOR

