

REPORT TO MINISTER FOR PLANNING AND ENVIRONMENT

By Graham Self MA MSc FRTPI

Appeal by Mr Neil Bassford against an enforcement notice.

Reference Number: ENF/2016/00005.

Site at: 9 Parade Road, St Helier.

Introduction

1. This appeal is against an enforcement notice dated 18 November 2016. The appeal is being decided by the written representations procedure. I made an unaccompanied site inspection on 27 January 2017.
2. This report considers aspects of the background history leading to this appeal, provides a brief description of the appeal site, summarises the gist of the representations, and sets out my assessment, conclusions and recommendation. The appeal statements and other relevant documents are available for you to examine if necessary.
3. Summary details of the enforcement notice are as follows:
 - The breach of planning control alleged in the notice is: "Without planning permission development has occurred at No.9 Parade Road, St Helier, namely: 2 No. 8 pane timber painted doors with margin lights and two top hung timber single glazed casements have been removed from the ground floor level of the South West elevation facing Parade Road and replaced with 2 No. UPVC, double glazed doors".
 - The requirements of the notice are: "Remove the 2 No. replacement UPVC, double glazed doors at the South West elevation of the effected address and replace them with 2 No. 8 pane timber painted doors with margin lights and two top hung timber casements with margin lights to replicate the historic doors and windows originally removed, in materials, method of opening, proportions, dimensions, visual weight, decorative details and with a painted finish to match the historic doors and windows removed".
 - The period for compliance is three months.
4. The appeal was made on ground (g) as set out in Article 109(2) of the Planning and Building (Jersey) Law 2002.

Background History and Scope of Appeal

5. Before assessing the appeal itself it is necessary to comment on its scope. The enforcement notice follows the refusal of retrospective planning permission in May 2016 and an appeal against that refusal. That appeal was dismissed on 31 October 2016. I have read the inspector's report and the decision on that case, and it is apparent from the report that the appellant did not appear at the site inspection or at the hearing.
6. In the statement made in the form lodging his current appeal against the enforcement notice and in his later written submission, Mr Bassford contends that the original appeal was not conducted fairly, as he did not get the opportunity to

present his case at the hearing. He says that this was due to the ambiguous letter he received from the Judicial Greffe which stated that the appeal would be based on the written submissions already made; this led him to believe that he would have no further input in the case and he was unaware that he was invited to attend the hearing. He also refers to the notification about the site inspection, informing him that the inspector's accompanied site inspection would take place on 7 September and that if he was present the inspector would not be able to enter into any discussion. Mr Bassford says that this notification did not make clear that he should be at the site to accompany the inspector and he assumed that his presence was not essential.

7. Mr Bassford therefore asks for the points he previously raised to be re-considered. He expands on several of these points in his submissions on the present appeal.
8. After I had read Mr Bassford's initial appeal statement in December 2016, I suggested to the Judicial Greffe that the wording of the notifications issued to appeal parties should be altered, so that where a hearing is being arranged, the notification should include the wording: "You [or your client if writing to an agent] should arrange to be present or to be represented at the hearing". I have also suggested that the phrase "if any parties are present" should not be used in correspondence notifying appellants of site inspections (whether being arranged as accompanied or unaccompanied inspections), as this phrase could be potentially confusing.
9. I made these suggestions so that the notifications could be made clearer. I can - at a stretch - find it conceivable that a person receiving the letters or emails which were sent as standard procedure up to about December 2016 could interpret them as not requiring the appellant to be present or represented at a site inspection or hearing. I insert "at a stretch" here because the term "hearing" can only reasonably be interpreted as referring to proceedings during which an inspector would hear oral submissions or evidence. Mr Bassford also states that he took guidance from a government website which describes an oral hearing as "a structured discussion led by the inspector and involving all the interested parties", and I would have thought that any appellant should have realised that "all the interested parties" includes the appellant (or someone acting on his or her behalf).
10. One of Mr Bassford's concerns is the suggestion in the inspector's report that Mr Bassford had indicated that he did not wish to attend the hearing. He believes that this would have portrayed him in a bad light as not caring about the appeal, whereas this was very far from the case and he was devastated to learn that he had lost the opportunity to present his case. Mr Bassford has also explained that he and his partner were first-time buyers of the appeal property and made a genuine mistake in not realising the need to obtain planning permission. The situation has caused him great stress.
11. I can understand why it was impossible for Mr Bassford to take time off work at short notice, after receiving a telephone call from the Judicial Greffe's Tribunals Manager shortly before the start of the hearing in September. I have no doubt that Mr Bassford did not set out deliberately to breach planning control, and I sympathise with the problems he has been facing. I do not know whether Mr Bassford and his partner employed a solicitor or other professionally qualified adviser to conduct normal searches before purchase, nor whether they were properly advised about the implications of the property's "potential listed building" designation or the planning significance of the need for work to the building's "principal elevation" (on both of which points I comment further

below). If so, they may wish to pursue this matter with the firm or person concerned.

12. Be that as it may, ground (g) of Article 109(2) of the 2002 Law is purely concerned with the period for compliance with an enforcement notice. If Mr Bassford had wanted to argue that the earlier appeal should be quashed on grounds of procedural wrong or unfairness, he should have made a legal challenge through the Royal Court. He may not have been aware of his legal rights, and I realise that a court challenge can be costly. The fact remains that an appeal on ground (g) against an enforcement notice is not a means of obtaining a reconsideration of a previous appeal or a review of its fairness. Whatever the rights or wrongs of what happened during the course of Mr Bassford's earlier appeal, there is no legal basis under this current appeal for me to investigate the conduct of previous appeal procedures or to adjudicate on their fairness.
13. For those reasons the rest of this report deals with the appeal on ground (g) as pleaded. I do not make any comment on those parts of the appellant's submissions relating to the "planning merits" of the development (for example, the effect of the development on the appearance of the appeal property, or the existence of modern windows elsewhere in Parade Road).

Appeal Site

14. The appeal property is a semi-detached house on the north-east side of Parade Road. The doors referred to in the enforcement notice are French doors in the ground floor front elevation of the building facing the road, as shown in the photograph attached to the planning authority's written statement.

Case for Appellant

15. Mr Bassford states that from a financial point of view the three month period for compliance is completely unachievable. Since the last appeal, it has come to light that all the remaining timber windows in the property are rotten and will require costly repair and/or replacement. Postponing the urgent work necessary to make the house secure and habitable, so as to rip out and replace perfectly good windows, whilst also paying a mortgage and other bills, is impossible.
16. Mr Bassford was told that the Department would work with him to find a satisfactory resolution. If the reality of working with him is an enforcement notice with a compliance period of three months over the Christmas period, he dreads to think what working against him would have involved.

Case for Planning Authority

17. The Department's statement refers to the time periods which have elapsed from the original application and contends that the harm caused by the development should be rectified as quickly as possible, now that it has been concluded on appeal that the upvc replacements are not acceptable. The Department was not responsible for the previous inspector's report or correspondence from the States Greffe and so makes no comment on these aspects.

Assessment and Conclusions

18. As I have explained, the correctness or fairness of the previous appeal decision and the resultant enforcement action itself are not issues for this appeal. Nevertheless I have considered whether specific planning permission was required for installing the disputed doors. I mention this point even though it has not been argued by Mr Bassford, because it may be helpful to explain that in

many cases, the replacement of a window or door to a building is "permitted development" under Class F.1 of Part 3 of the General Development Order.¹ However, as was noted by the inspector who assessed the previous appeal, the Order also provides (in paragraph F.2 of Class F of Part 3) that the permission granted under Class F does not cover work to a "pLBP" - a "potential listed building or place". This exclusion evidently applies to the appeal property (or at least, applied when the work was carried out).

19. The development enforced against also involved work to the principal elevation of the building. Such work is excluded from permitted development. So even setting aside the building's "pLBP" designation, the permitted development rights under Class F.1 of Part 3 of the General Development Order do not apply.
20. Mr Bassford has not attempted to put forward any of the sort of arguments which could perhaps normally be expected to support a case that the compliance period specified in the enforcement notice is too short. For example, he has not suggested that an extended time period is needed for obtaining quotations from suitable contractors or that it would be impossible for a contractor to carry out the requirements of the notice within the three-month period. The evidence that the remaining timber windows in the property need replacing does not affect the issue of whether the requirements of the enforcement notice could be met within the three month period, which would now run from the date of the decision on this appeal. Mr Bassford's case seems to be based mainly on the financial hardship caused by the enforcement action, combined with a request that the requirement to replace the doors in the ground floor front of the property should be delayed so that the appellant can cope financially with the more urgent need to replace rotting window frames elsewhere.
21. One of the appellant's comments is about lack of consultation before enforcement action was taken. Supplementary Planning Guidance Practice Note 4 sets out (in paragraph 9) your Department's policy on enforcement procedures. It states:

"Prior to any formal enforcement action being taken, officers will provide an opportunity to the person committing the alleged breach to discuss the case and if possible resolve points of difference".
22. Mr Bassford appears to be alleging that your Department did not give him an opportunity to discuss the case before the enforcement notice was issued. The Department state that after receiving a complaint about the unauthorised removal of the original windows and doors they "sought to resolve the matter amicably". Exactly what that means is not clear. The Department evidently held off taking formal enforcement action and allowed the appellant the opportunity to submit an application, then allowed time for the subsequent appeal to be considered; but from the available evidence I cannot tell whether any officer of your Department specifically invited Mr Bassford to discuss the case. Even if no such invitation was issued, it would not be a good reason for quashing the enforcement notice, because the words "if possible" in the quotation above are relevant here and it appears unlikely that any way of resolving matters would have been found, especially bearing in mind the history including a refusal of planning permission and an unsuccessful appeal.
23. The Practice Note quoted above is somewhat ambiguous, since it could be taken to mean the provision merely of an amount of time for a person to take action or to ask the Department for a discussion, as opposed to the Department issuing an invitation. Discussion with someone who has breached planning control may

¹ The full reference is Class F.1 of Part 3 of Schedule 1 of the Planning and Building (General Development) (Jersey) Order 2011 (Revised Edition), as applied by Article 2 of the Order.

often be fruitless; but the phrase "provide an opportunity....to discuss" could be taken to imply a specific invitation to take part in a discussion. You may therefore wish to consider whether the Department's published guidance could benefit from clarification, even though this point does not affect the outcome of the appeal.

24. In summary, there is scant evidence to support the appellant's case on ground (g). The suspension of the enforcement notice resulting from the appeal has already taken the compliance period beyond the mid-winter and Christmas period when window replacement may be more difficult than in spring or summer. When I saw the appeal property scaffolding was in place, although no work was actively in progress (possibly because of wet weather at the time) and I do not know whether the scaffolding was to enable painting of the frontage render or work on the upper floor windows, or both. Be that as it may, this breach of planning control is not causing the sort of problem which can occur with some types of development requiring urgent enforcement action (for example, where a road safety hazard or intrusive noise is being caused).
25. No evidence has been submitted about what would be a typical time for local window installation firms or carpenters to supply quotations, or about their availability; but allowing for these factors as best I can by assumptions, three months seems to me a rather tight time period for completing the work specified in the enforcement notice. The planning authority's references to the time periods going back to the original complaint and application are of limited relevance since Mr Bassford has been entitled to await the result of his appeal against the enforcement notice before taking any steps towards compliance. I also consider that there are humanitarian grounds for allowing him a longer time to comply with the notice.
26. On balance, I judge that it would be reasonable to extend the compliance period to four months in the hope that the additional time would help to reduce the financial hardship faced by the appellant, whilst also giving a more generous time for obtaining quotations, selecting a contractor, and arranging for the work to be carried out.

Recommendation

27. I recommend:
- (i) that the appeal should be allowed but only to the limited extent that the enforcement notice be varied to extend the compliance period from three months to four months; and
 - (ii) that the notice as varied be upheld.

G F Self

Inspector

6 February 2017