

Appeal Decision

Site visit made on 7 November, 2016

by C. Jack, BSc (Hons) MA MA(TP) MRTPI

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

Decision date: 17th November, 2016

Appeal Ref: APP/Q1445/W/16/3154791

77A London Road, Brighton, BN1 4JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr. Daniels against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00417, dated 1 March, 2016, was refused by notice dated 28 April, 2016.
 - The development was originally described as 'retrospective application for the development of vacant lower ground floor ancillary storage into a modern self-contained two-bed flat with outdoor amenity space'.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of lower ground floor ancillary storage to form 1 two-bedroom flat with associated alterations at 77A London Road, Brighton, BN1 4JF in accordance with the terms of the application, Ref BH2016/00417, dated 1 March, 2016, and the plans numbered: 1180-PA-001; 1180-PA-002; 1180-PA-003; 1180-PA-004; 1180-PA-005; 1180-PA-010; 1180-PA-011; 1180-PA-0012; 1180-PA-013; and 1180-PA-014.

Preliminary Matters

2. I saw during my site visit that the development has been completed and is occupied.
3. Notwithstanding the original description of the development given on the application form, in my decision above I have taken the more concise description used by the Council on its decision notice, for clarity.

Main Issue

4. The main issue is the effect of the development on the living conditions of future occupiers, with particular regard to outlook and light.

Reasons

5. 77 London Road currently consists of an Italian restaurant at ground floor level and residential units above and below. I am advised that the lower ground floor unit to which this appeal relates was vacant prior to being converted into a separate 2 bedroom flat, No 77A, having previously been used as ancillary storage to the commercial unit. The local area is a busy and vibrant part of the city, where there is a melded variety of commercial uses, including those active in the evening economy, and residential dwellings.
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6. The new flat is accessed from the street via a separate front door, adjacent to the restaurant. At the rear of the flat, the kitchen, living room and bedroom 2 each face out onto a compact, split-level sunken courtyard. The small kitchen has two windows facing the courtyard from where it receives natural daylight. I am advised by the Internal Daylight Report by Delta Green (IDR) that the daylight received in the kitchen falls below the levels advocated in the Building Research Establishment (BRE) Guide to Site Layout Planning for Daylight and Sunlight, which are taken from the British Standard BS 8206-2.
7. The Council has not contested the findings of the IDR and I see no significant reason not to accept them. The IDR indicates that if the existing solid door between the kitchen and the living room was replaced with a glazed door the BRE requirements would be exceeded. Notwithstanding this, and acknowledging that my visit took place on a bright day, the level of daylight in the kitchen was sufficient not to rely on artificial light and the room was not significantly gloomy.
8. The IDR also indicates that daylight to bedroom 1 did not meet the BRE requirement. I saw during my visit that there is a glazed light shaft serving bedroom 1 with light from the street level above, together with the mirrored light shaft that has been installed adjacent to it, which reflects daylight into the room. Internally, the glazed light shaft resembles a cupboard with a clear glazed door and the mirrored shaft reflects light through a window unit. The light received in the room from the mirrored shaft is very bright, such that the residents have fitted a blind to the window to control it. The Limitless Report, which relates to the effectiveness of the provision of natural daylight to bedroom 1, indicated that with a mirrored light shaft installed the average daylight factor in bedroom one would be 1.29% and therefore exceed the BRE requirement of 1.00%.
9. The Council has questioned the objectivity of the Limitless Report and the nature and extent of the data provided within it. However, it has not provided any significant counter evidence that the concluded average daylight factor of 1.29% is incorrect. Furthermore, during my site visit, I found the overall level of daylight in bedroom 1 to be adequate, largely due to the light received from the mirrored light shaft. While the overall level of natural lighting was not substantial, it was not significantly under-lit.
10. The living room and bedroom 2 have been assessed in the IDR as meeting the BRE daylight requirements, and this is not contested. These rooms both have patio doors opening onto the courtyard area and while they were also not brightly lit, and as with the other rooms would receive little or no direct sunlight, they were not unduly gloomy. Due to the limited size of the courtyard, the outlook from these rooms, and the kitchen, is not extensive. However, it is also not unpleasant. The courtyard area is painted in a light cream and features steps and terracing, which together with the occupants' potted plants and other garden items give some visual interest to the outlook. While this restricted arrangement may not suit everyone's tastes, it is not significantly out of character in a close-knit urban environment of this kind.
11. There is no outlook from bedroom 1 since all that can be seen through the window is the arrangement of mirrors that reflect light into the room through the mirrored light shaft. The glazing at the top of this and the second light shaft adjacent to it is obscured such that there is no outlook to the street or

sky above. In many circumstances this lack of outlook might result in a claustrophobic living environment. However, in this instance the flat is reasonably well laid out and spacious, and it is apparent that the current occupants have created a comfortable home there. While noting that the outlook is restricted and that the property does not receive any significant direct sunlight, I have not found that the standard of accommodation provided to be inadequate such as to cause harm to the amenity of the existing or future occupiers.

12. I therefore conclude that the development is not harmful to the living conditions of future occupiers, with particular regard to outlook and light. Accordingly, I find no conflict with retained Policy QD27 of the Brighton and Hove Local Plan 2005, which seeks to ensure that development, including change of use, does not cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents and occupiers.

Other Matters

13. The appellant submits that the Council cannot meet its objectively assessed need for housing so its policies relevant to the supply of housing should not be considered up to date. The Council states that pursuant to the adoption of the Brighton and Hove City Plan Part One 2016 it can demonstrate a five-year supply of deliverable housing sites, as required by Paragraph 49 of the National Planning Policy Framework. However, as I have found the development to accord with the development plan the presumption in favour of sustainable development applies, there is no necessity for me to consider these matters further.
14. I note the Council's concern that the flat does not constitute a high quality home, being situated below a restaurant and close to a pub and nightclub. However, there is no significant evidence before me of noise or other associated disturbance beyond that which might be expected in this busy location. I am therefore unable to give this matter more than a little weight, which is not sufficient to outweigh my findings in relation to the main issue.

Conditions

15. I have considered the Council's suggested conditions. Those relating to the standard time condition and the pre-commencement and pre-occupation conditions relating to the provision of the light well/daylight reflector, elevation details, the provision of cycle parking facilities and restricting access to parking permits are not reasonable as the development is already completed and occupied and no significant evidence has been provided to show that they are necessary to make the development acceptable in planning terms. I am therefore not satisfied that they meet the six tests set out in the Framework. A condition specifying the approved plans is also not necessary as these are specified in the decision above.
16. I have also considered the appellant's suggestion that a glazed kitchen door could be secured by condition in order that the relevant BRE daylight standard is achieved for that room. However, I have found that the existing situation is acceptable and so I agree with the appellant that this is a matter for the discretion of future occupiers.

Conclusion

17. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR