

Appeal Decisions

Hearing held on 21 December 2016

Site visit made on 21 December 2016

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 11th January 2017

Appeal A Ref: APP/Q1445/W/16/3155980

19 Oriental Place, Brighton & Hove, BN1 2LL

- 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 Mrs Stephanie Harding against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/04087, dated 5 November 2015, was refused by notice dated 8 April 2016.
 - The development proposed is described as appeal form as '*Conversion of Hotel (C1) to form 4no. studio flats, 3no. one bedroom flats and 1no. two bedroom maisonette (C3) with associated alterations including rear extension at second floor level*'.
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Appeal B Ref: APP/Q1445/Y/16/3155981

19 Oriental Place, Brighton & Hove, BN1 2LL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) against a refusal to grant listed building consent.
 - The appeal is made by Mrs Stephanie Harding against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/04088, dated 5 November 2015, was refused by notice dated 8 April 2016.
 - The works proposed are described on the appeal form as '*Conversion of Hotel (C1) to form 4no. studio flats, 3no. one bedroom flats and 1no. two bedroom maisonette (C3) with associated alterations including rear extension at second floor level*'.
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Decisions

1. The appeals are dismissed.

Preliminary Matter

2. The descriptions in the above header are taken from the appeal form. At the Hearing the main parties agreed that it was this description that should be used rather than that on the application form. I see no reason to disagree and have proceeded on this basis.
 3. This decision letter deals with two appeals; Appeal A for planning permission and Appeal B for listed building consent. Whilst subject to different parts of planning legislation, given the similarities involved in first main issue, and to avoid repetition, I have dealt with both appeals within this single decision letter.
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Main Issues

4. The main issues are:

- Whether the proposed development would preserve the special architectural or historical interest of the Grade II* listed building or its setting; and whether it would preserve or enhance the character or appearance of the Regency Square Conservation Area; and,
- The effect of the proposed development on the living conditions of future occupiers, with specific regard to light, outlook and living space.

Reasons

Heritage assets

5. The appeal building is a Grade II* listed building located within the Regency Square Conservation Area. It is a four storey over basement building, situated in an end of terrace location, with elevations facing onto Oriental Place, Sillwood Street and Montpelier Road. In the main, neither party raises specific concerns over the proposed internal works. Given that specific details of such matters can normally be dealt with by condition and the detailed examination of the potential to retain historical features I see no reason not to concur. I have therefore focussed upon the external changes sought.
6. The Neo Hotel (also known as 19 Oriental Place) dates from circa 1827, having been designed by AH Wilds, who is known for designing large parts of the city. Part of the significance of the conservation area and listed building derives from this historical association and also from the overall architectural style within the wider conservation area which is typical of the expansion of this part of the city in the late 1700s and early 1800s. In terms of the appeal building, there is two storey wing to the rear of the building facing Montpelier Road. Neither party is entirely sure of the date it was erected, but evidence suggests it was in place by 1875 and this seems a reasonable date for this wing.
7. This part of the listed building benefits from features such as laurel wreath moulding beneath a parapet cornice and a shallow canted oriel window at first floor. I saw during my site inspection that the outline of the south flank elevation in particular has a distinctive profile due to a chimney flue that steps down from the main building into the rear wing with an attractive sloped wall. When looking both southwards (towards the seafront) and northwards along Montpelier Road, this chimney flue is a quirky feature within the roofscape, and helps add character to both the listed building and the wider conservation area. Visually it leads the viewer's eye down from the chimney to the parapet with its detailed cornice and this reinforces the subservient relationship between the main body of the building and the rear wing element. It is from factors such as these, that the significance of the listed building also derives.
8. The appeal scheme seeks the erection of a second floor extension which would sit upon most of the flat parapet roof area of the rear wing. There is an existing extension on this part of the building, which has a shallow depth and flat roof and is used as a store room for the hotel. The proposed extension would have a hipped slate roof with timber sliding sash windows and be rendered and painted, so as to match the finish of the rest of the building, as shown on drawing 9984/02 Revision F. It would also require the closing of an

- existing window opening and turning this into a 'blind' window. The floor area would serve proposed Flat 7, and be the only floor area serving that flat.
9. However, due to the height and depth of the proposed extension, it would result in a prominent addition to two storey rear wing of the building. Whilst I note that the eaves and ridge height would be lower than that of the main body of the building, both would still add significant bulk to the rear wing of the building. The result would be a substantial increase in the overall height of the rear wing, and the introduction of further feature onto the flat roof. In particular, the proposed hipped roof would sit meekly above the strong cornice parapet and thus appear somewhat odd against the more ornate parapet. What is more, with the further storey arising from the appeal proposal, rather than appearing as a subservient rear wing of the building the extension would visually challenge the prominence of the historic core of the listed building.
 10. The extension would also detract from the canted oriel window and detailed parapet and erode the profile of the chimney flue so that from the north, looking towards the sea, the viewer would see little more than the end of the chimney stack. From the south on Montpelier Road, you might be able to see the outline of the curved wall, but this would be against the backdrop of the further bulk added to the rear of the listed building. As a result, the chimney flues role as a contributing feature to this part of the conservation area and in gently leading the eye from the historic core of the building to the wing would be severely and detrimentally affected.
 11. Accordingly, the proposal would have a negative impact on both the listed building and its setting, and on the conservation area. As a result it would fail to preserve the special interest of the Grade II* listed building and fail to preserve the character of the Regency Square Conservation Area, as sought by Sections 16(2), 66(1) and 72(1) of the PLBCA Act 1990, as amended. Paragraphs 131 to 134 of the *National Planning Policy Framework* (the Framework) indicates degrees of harm that may arise namely 'substantial' or 'less than substantial', although both are not formally defined.
 12. In this case, given that the element of the proposal which would affect the listed building is limited in scale to one part of the building, I find that it would result in no more than less than substantial harm. However, less than substantial harm does not mean less than substantial planning objection, and I give considerable importance and weight to the desirability of preserving heritage assets, as set out in the PLBCA.
 13. Paragraph 134 indicates that the less than substantial harm should be weighed against the public benefits. In this case, I heard from the appellant that they consider that the public benefits include the provision of accommodation towards the housing land supply of the area, the shortage of accommodation of this type within the city and thus the scheme contributing towards this type of accommodation, that the proposal would increase the viability of the project, that the building would be used rather than left empty (and that this is a more viable use of the building), that earlier conversions have obscured internal features such as chimney breasts, and that this scheme would help better reveal these elements and that there may be better economic benefits from long term residents compared to short-term visitors to the city.
 14. Notwithstanding my considerations on the standard of accommodation proposed in the next section, I acknowledge that there is a need for smaller

units of accommodation within the city and such a factor would be a limited public benefit in general terms. In terms of viability, there is little coherent information before me that demonstrates that the scheme requires the creation of eight units rather than seven or nine to be viable, for example. Indeed, given the dearth of information in this respect I cannot be sure whether or not the scheme represents a viable scheme in itself, or that the numbers proposed are critical to its success financially.

15. In terms of revealing internal features, this would be primarily limited to the private occupiers of the building, and therefore chiefly a private rather than public benefit. Lastly, the long- versus short-term occupancy of the building is noted. However, there is little before me to substantiate this claim, and correspondingly this factor can only be afforded little weight. When taken as a whole, I find that the public benefits cited, do not outweigh the less than substantial harm I have identified.
16. Accordingly, I therefore conclude that the proposed development would fail to preserve the historic features of the listed building and its setting, and fail to preserve the character of the conservation area. As such, the proposal would conflict with Policies QD14, HE1, HE3, and HE6 of the *Brighton and Hove Local Plan 2005* (BHLP) and Policy CP15 of the *Brighton and Hove City Plan – Part One 2016* (BHCP), which, amongst other aims, seek to ensure that developments do not have adverse effect on the architectural and historic character or appearance of the exterior of the building and that the city's historic environment will be conserved and enhanced in accordance with its identified significance.
17. It would also conflict with the Policies of the Framework, which beyond those cited above, also include conserving heritage assets in a manner appropriate to their significance and that great weight should be given to a heritage asset's conservation.

Living conditions

18. In terms of living conditions, the main areas of conflict between the principal parties revolves around the floor size of the flats numbered 2, 3, 5 and 7 on the submitted drawings, and the standard of accommodation in the proposed basement flat 2 in terms of light and outlook. I consider these separately before coming to an overall conclusion.
19. In terms of floor areas or a space standard, in March 2015 DCLG issued the *Technical housing standards – nationally described space standard* which complimented the *Written Ministerial Statement of 25 March 2015* (WMS). Put simply, the National Described Space Standard (NDSS) sets out the minimum requirements for the Gross Internal (floor) Area of new dwellings. The proposal in this case seeks express planning permission to eight flats from a hotel use, and therefore the NDSS is of some relevance.
20. The Council does not have a specific relevant local plan policy relating to space standards; although I note that Policy CP19 of the BHCP indicates that the Council intends to apply these in Part 2 of the BHCP. The WMS is clear in that '*Decision takers should only require compliance with the new national technical standards where there is a relevant current Local Plan policy.*' This does not, however, negate consideration of the evidence put before me by the main parties. Furthermore, Paragraph 17 of the Framework, which sets out the core

- planning principles, includes that planning should seek a good standard of amenity for occupiers.
21. The Council has provided a table at 7.2.8 of their Statement of Case. This shows the proposed flats, their type, approximate floor area in m² and the minimum size set out in the NDSS. At the Hearing, the appellant agreed that the figures provided were broadly reflective of the sizes of the proposed units. My attention was drawn to the fact that none of the proposed flats would meet the minimum gross internal floor area as set out in the NDSS.
 22. What is more, as approximate sizes, Flat 7 would have a floor area of 20.8m², Flat 5 of 30.2 m², Flat 2 of 26m², and Flat 3 of 27.7m². The figure set out for such one bedroom, one person dwellings is 37 m² in the NDSS. I acknowledge the appellant's case that the Council does not have a specifically adopted development plan policy for implementing the NDSS, and that the nature of the listed building is that compromises on space are sometimes required in order to achieve a satisfactory heritage outcome.
 23. However, not only would all of the proposed flats fall below the government's minimum NDSS, but Flats 2, 3, 5, and would fall significantly below this. Whilst I have applied the government's minimum figures only as a guide, it is clear that the flats in this case would fall considerably below this minimum national standard. The accommodation would therefore be severely restricted in terms of its gross internal floor area and this would result in unacceptable living conditions for future occupiers, and especially so in the case of Flats 2, 3, 5 and 7.
 24. I acknowledge the appellant's evidence in the form of a letter from one local estate agent indicating that in their view, there is a 'need' for units of this size within the City. However, upon exploration of this at the Hearing, the appellant conceded that the word should actually have been 'demand', as a specific need had not been identified in planning terms. What is more, this 'demand' and associated observations appeared to be based on little more than mailing lists sent to customers with no technical evidence submitted by the appellant to support these assertions. As such I can give such assertions no more than negligible weight. In any case, this does not negate the fact that the level of internal living space would be extremely limited nor does it provide justification that the living space proposed would provide a good level of amenity for future occupiers.
 25. In terms of light and outlook, the Council's concerns relate to the provision of an existing single window to serve proposed Flat 2. I saw during my site inspection that the flat would be located within part of the basement, which is below pavement level. I was able to see both out of and into the window serving this room, which is currently shown on the drawings as a treatment room. I saw that for occupiers of this room, outlook would be restricted to a steep angle outwards to the sky when standing in front of the window; although much of this was obscured by the seven storey 'Osprey House' building situated on the opposite side of Sillwood Street.
 26. Access to light and outlook from this window is further reduced by the short brick plinth around the light well (presumably to stop pedestrians from inadvertently falling into the light well). The combination of the steep angle looking out, Osprey House opposite and the brick plinth, means that occupiers of this flat are unlikely to receive much daylight through this north facing

window and have an outlook that would be restricted to small patches of sky in between the bodies of passing pedestrians. Whilst there is no detailed analysis of the level of light entering the room, it was clear from my site visit that unless standing directly in front of the window, future occupiers would have an extremely limited and materially harmful level of outlook and light from this single window.

27. I therefore conclude that the proposed development would result in material harm to future occupiers through the unacceptable levels of living space, outlook and light provided. Accordingly, the proposal would conflict with Policy CP19 of the BHCP and Policy QD27 of the BHLP, which, amongst other aims, seek to ensure that any change of use does not cause loss of amenity to proposed occupiers. It would also conflict with the Policies of the Framework, which include that planning should always seek to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other matters

28. At the appeal stage, the Council indicated that commuted sum of £344,500 was sought for affordable housing under Policy CP20 of the BHCP. This matter was discussed at some length at the Hearing, and I heard evidence from both parties on it. The appellant has not submitted a legal agreement in this case (also known as a planning obligation), as they consider that both the sum sought, and the reasons it is sought for, should be calibrated in light of the *Written Ministerial Statement on support for small-scale developers, custom and self-builders* of the 28 November 2014, which indicates that for developer contributions on sites of 10-units or less and which have a maximum combined gross floor space of 1000 square metres affordable housing should not be sought.
29. I have found that the proposal is unacceptable in respect of the main issues identified, and whether or not one party or the others case in respect of affordable housing is correct, would not alter this fact. Accordingly, I have not considered this matter in greater detail, as I have found the scheme unacceptable on the main issues.

Conclusion

30. For the reasons given above, and having taken into account all matters raised, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephanie Harding	Appellant/Owner
Richard Crook, RIBA, AA Dip, AABC	Conservation Architect
Adrian Moore, MRTPI	Planning Consultant (Director Parker Dann)
Maggie Henderson MA (Hons)	Historic Buildings Archaeologist
Mark Smith BSc	Affordable Housing Consultant (Affordable Housing 106)
Darren Dunkley	Fox and Sons (Estate Agents)

FOR THE LOCAL PLANNING AUTHORITY:

Helen Hobbs	Planning Officer
Tim Jefferies	Principal Planning Officer (Conservation)

Documents submitted at the Hearing:

By the local planning authority:

1. Policy CP 20 - Affordable Housing of the BHCP
2. Developer Contributions Technical Guidance, June 2016
3. Statement of Common Ground – dated 13 December 2016 by appellant and 19 December 2016 by the LPA
4. Policy CP7 Infrastructure and Developer Contributions of the BHCP
5. DVS letter dated 15 April 2016 to Planning Policy Team

By the Appellant:

1. Technical housing standards – national described space standard, DCLG March 2015
2. Document entitled Neo Hotel, 19 Oriental Plan, Brighton BN1 2LL, AH – Appendix 2, relating to planning obligations
3. Appeal Decision Ref 3152366, Hove Business Centre, BN3 6HA