The Planning Inspectorate

Appeal Decision

Site visit made on 6 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 Ref: APP/Q1445/W/16/3155262
18 Circus Street, Brighton, BN2 9QF

- 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 Michel Blencowe against the decision of Brighton & Hove City Council.
- The application Ref BH2016/01641, dated 27 April 2016, was refused by notice dated 4 July 2016.
- The development proposed is described as *'demolition of existing building and erection of three storey building comprising 3no one bedroom flats (C3)'*.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The property 38 Grand Parade is a Grade II listed building located to the rear of 18 Circus Street. Section 1(5) of The *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended (PLBCA), states that '*listed building means a building which is for the time being included in a list compiled or approved by the Secretary of State…and for the purposes of this Act – (a) any object or structure affixed to the building; (b) any object within the curtilage of the building, which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948, shall be treated as part of the building.*

3. At the appeal stage, I sought the views of the main parties as to whether the appeal building, No 18 Circus Street, was either affixed to No 38 Grand Parade which is a Grade II listed building, or within its curtilage, for the purposes of the PLBCA. No response was provided by the appellant within the set timetable. I have taken into account that the Council's 'on balance view' is that S.1(5)(a) does not apply, and that they cannot provide a definitive answer on S.1(5)(b).

4. On the basis of the evidence before me, the appeal building is a structure affixed to the listed building as envisaged by subsection (a), by virtue of the attachment of the link structure as shown on drawings YO160 – D02 and YO160-A02. What is more, although it may have been in a separate use at the time of listing in 1971, it appears as though 18 Circus Street was an ancillary building of the listed building from at least 1875, with the earliest documented separate use shown from a street directory in 1951. The appellant's heritage statement supports this by indicating that the appeal building is a 'historic

building'[1]. On the basis of the evidence before me, the appeal building should be considered, at the very least, as a 'curtilage' listed building. In accordance with the PLBCA, the appeal building should be considered in the same manner in which a listed building is considered.

5. Accordingly the main issues are:

- Whether the proposed development would preserve the special architectural or historical interest of the listed building and its setting, or the settings of nearby listed buildings, and whether it would preserve or enhance the character or appearance of the Valley Gardens Conservation Area; and,
- The effect of the proposed development on the living conditions of existing and adjoining occupiers with specific regard to light, overlooking, outlook and internal floor areas.

Reasons

Heritage assets

6. The appeal site is occupied by a two storey building located to the rear of the Grade II listed building 38 Grand Parade. The appeal building is referred to as 18 Circus Street, and when viewed from that street it is characterised by a two storey brick building with gambrel style roof and gable end facing Circus Street. The street scene on the western side is characterised by a mixture of mainly single or two storey buildings, which back onto other parts of the terrace facing Grand Parade. Visually, their height and form means that they are subservient to the buildings facing onto Grand Parade, which in many cases are a storey or so above those facing Circus Street. The rears of Nos 37, 40 and 41 Grand Parade (which form a 19th century terrace) are visible from Circus Street, with the buildings themselves also Grade II listed.

7. The significance of both the listed buildings and the conservation area derives from the fact that historically Circus Street was laid out in the early 19th Century as a fairly narrow thoroughfare. The area has evolved over time, as has the settlement of Brighton, but it is clear that the appeal building was most likely used for some form of stabling or as a workshop; although it is unclear as to whether this was in association with the buildings facing Grand Parade or not, or when any such link it ceased. Nonetheless, the evidence suggests that the building was most likely ancillary to use of No 38 Grand Parade, with no separate address registered until 1951. The appeal building plays an important role in understanding the subservient relationship between the grand buildings facing onto Grand Parade and the lesser buildings serving these to the rear.

8. This can be seen in the subservient height of the buildings along the western side of Circus Street in relation to those facing Grand Parade further to the west, and the overall two storey form which has been retained along the western edge of Circus Street. This lower overall height along Circus Street in comparison to that along Grand Parade makes an important contribution to the significance of the listed building, the settings of nearby listed buildings and the character of the conservation area.

9. The appeal scheme seeks the demolition of the building at 18 Circus Street and its replacement with a three storey building. There is little justification for the

[1] See Heritage Statement, Dated 2 April 2016 -Paragraph 5.1, Page 13

loss of this historic building within the Valley Gardens Conservation Area, beyond that set out in the conclusions section of the appellant's Heritage Statement, dated 2 April 2016 at paragraph 6.1. In the main, these refer to the derelict nature of the building and problems such as water ingress and that it is at risk of collapse. However, it has not been explained in detail as to why the building has fallen into such a state of disrepair, nor is there any detailed assessment that the economic costs of such repair work would be unacceptable.

10. What is more, the proposed design would see the introduction of a three storey building which would tower above the single storey rear projection to the north of the site and the mainly two storey form found elsewhere along Circus Street. The effect visually would be to obscure the rear elevations of the listed buildings. More importantly, it would seek to challenge the visual prominence of the rear elevation of No 38 and the important subservient relationship between the historic ancillary service buildings and the grander houses facing the main thoroughfare on Grand Parade. As a result the proposal would detract from the significance of the listed building and its setting, and the conservation area. It would therefore fail to preserve the character or appearance of the conservation area and fail to preserve the special interest of the listed building; the desirability of both for which I give considerable importance and weight, as envisaged by Sections 66(1) and 72(1) of the PBLCA.

11. The *National Planning Policy Framework* (the Framework) sets out that great weight should be given to the asset's conservation and that a proposal may lead to 'substantial' or 'less than substantial harm' at paragraphs 132 to 134. Although, neither term is defined, to result in a 'substantial' level of harm one would typically expect that it would need to have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced. The proposal here would result in the unjustified demolition of part of a listed building (whether by virtue of its attachment or curtilage status) and the introduction of a new building that would be at odds with the character of this part of the conservation area in this location. However, the historic heart of the listed building would remain unaffected. As such, the loss of 18 Circus Street would amount to no more than less than substantial harm to the listed building in this case as set out in Paragraph 134 of the Framework.

12. In such circumstances, the Framework sets out that this harm should be weighed against the public benefits. I note that the proposal would provide three new residential units and that there is shortage of housing within the City. However, this scale of provision whilst laudable, when set against the annual target of 660 units per year, can be afforded no more than little weight in favour of the proposal given its scale. I have also been directed to the poor state of the building. However, there is little cogent evidence which explains why there is no viable use of the heritage asset nor has it been demonstrated that the nature of the heritage asset prevents all reasonable uses of the site. In the absence of such evidence, there appears to be little justification for the loss of the building, and thus this does not weigh as a public benefit in favour of the scheme. Accordingly, I do not find that these benefits would outweigh the less than substantial harm I have identified.

13. I therefore conclude that the proposed development would fail to preserve features of special architectural or historic interest of the listed building and its setting, and would fail to preserve the character of the Valley Gardens Conservation Area. The proposal would therefore conflict with Policies HE6 of the *Brighton and Hove Local Plan 2005* (BHLP) and Policy CP15 of the *Brighton and Hove City Plan - Part One March 2016* (BHCP), which, amongst other aims, seek to ensure that the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets and their settings.

14. It would also be contrary to the Policies of the Framework, which beyond those already cited include conserving heritage assets in a manner appropriate to their significance. It would also fail the overarching statutory duties set out in Sections 66(1) and 72(1) of the PLBCA.

Living conditions

15. In terms of living conditions, the Council is concerned that the close proximity of the proposed and existing building would be such that it would lead to a detrimental level of overlooking. However, the floor plans clearly show that, in the main, windows would be situated to overlook Circus Street. What is more, in densely built-up urban areas it is not uncommon for openings to be located in close proximity to each other. I have not been directed to any specific windows where there would be a face to face relationship or where occupiers would specifically overlook each other, beyond the Council's concern over the scale of development. In such circumstances, I do not find that the proposal would result in a materially harmful level of overlooking or loss of outlook.

16. With regards to light, I appreciate that the building would be taller than the current building. However, the Council has not identified which windows or living areas might be affected by a materially harmful loss of light. Whilst it is likely that there would be some loss of light for occupiers in buildings to the north of the site from the additional storey, given that the first building in this direction is a 24 hour café, it is unlikely that occupiers would suffer from an unacceptable loss of either sun- or day-light into living areas of that building. Given such factors, I do not consider that the proposal would lead to an unacceptable loss of light for neighbouring occupiers in this case.

17. In terms of internal floor areas, as the appellant points out, all three flats would meet the minimum internal floor area set out in the Nationally Described Space Standard (NDSS) set out in the March 2015 DCLG issued *Technical housing standards – nationally described space standard* which complemented the *Written Ministerial Statement of 25 March 2015* (WMS). 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 Two of the BHCP.

18. 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.'* In any case, the proposal would provide a floor area in excess of the minimum standard, and in such circumstances I find that the proposal would provide an adequate level of internal floor space for future occupiers.

19. I therefore conclude that the proposal would not result in an unacceptable impact on the living conditions of existing and adjoining occupiers with specific

regard to light, overlooking, outlook and internal floor areas. Accordingly, the proposal would accord with Policy QD27 of the BHLP, which amongst other aims, seeks to ensure that any development does not cause loss of amenity to proposed, existing and/or adjacent users or occupiers.

Conclusion

20. Whilst I have found in favour of the appellant on the second main issue, this does not overcome the harm identified in respect of the first main issue.

21. 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