
Appeal Decisions

Site visit made on 18 July 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 7th August 2017

Appeal A: APP/Q1445/W/17/3171388 **101 Roundhill Crescent, Brighton BN2 3GP**

- 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 Ms Wendy Jamieson against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00752, dated 1 March 2016, was refused by notice dated 22 November 2016.
 - The development proposed is erection of 1no three bedroom dwelling (C3) incorporating alterations to boundary wall and external alterations to existing building including repair works, alterations to fenestration and associated works.
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Appeal B: APP/Q1445/Y/17/3171393 **101 Roundhill Crescent, Brighton BN2 3GP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Ms Wendy Jamieson against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/00753, dated 1 March 2016, was refused by notice dated 22 November 2016.
 - The works proposed are erection of 1no three bedroom dwelling (C3) incorporating alterations to boundary wall and external alterations to existing building including repair works, alterations to fenestration and associated works.
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Decisions

1. I dismiss both appeals.

Main Issues

2. In both Appeal A and Appeal B the main issue is;
 - The effect of the proposal on the significance of designated heritage assets.and in Appeal A only;
 - The effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to outlook and sunlight.

Reasons

Policy

3. Policy HE1 of the Brighton & Hove Local Plan states that alterations to listed buildings will only be permitted if the proposal would not have any adverse

effect on the architectural and historic character or appearance of the interior or exterior of the building or its setting and the proposal respects the scale, design, materials and finishes of the existing buildings, and preserves its historic fabric. Policy HE6 seeks to preserve or enhance the character and appearance of the conservation area. Policy QD27 states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and / or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Policies CP12 and CP15 of the Brighton and Hove City Plan Part One concern urban design and the protection of heritage.

4. Paragraph 56 of the National Planning Policy Framework states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Paragraph 132 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.
5. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

Designated Heritage Assets

6. These are the Round Hill Conservation Area, 101 – 113 Roundhill Crescent listed Grade II, and the 'bungaroosh' wall that should be regarded as being listed through association with the listed 101 Roundhill Crescent.
7. The Officer's Report refers to views and vistas identified in the Round Hill Conservation Area Statement, but that across the site is not one of the two identified 'vistas'. The statement also refers generally to views of the sea or the downs. However, the view through the present gap between 101 Roundhill Crescent and 4 D'aubigny Road is clearly not a planned vista, and has been severely curtailed by the development of a supermarket on the Lewes Road Junction. Views may be had of green space, stated to be a cemetery, tiers of buildings rising up the opposite valley side, and a part of the open downs beyond on the horizon. The view is cut-off by other closer buildings in other than almost directly facing the gap. Whilst pleasant and clearly appreciated, neither the gap nor the view through it can be said to be a significant aspect of the conservation area's character and appearance.
8. The proposed building would not occupy the whole of the gap through which the view is available, and would be placed on the side that is most adversely affected by the blank walls and roofs of the supermarket. Sufficient view of distant greenery and downland would remain in order to allow a link between the urban area and the countryside, and the proposed addition of one house would not cause substantial harm to that view either within or looking out of the conservation area.

9. The wall is described as 'bungaroosh', a construction method peculiar to Brighton and a limited neighbouring area. It is of historic interest, but is not unduly rare and the works proposed to parts only of its length would not cause substantial harm to the significance of it or the principle listed building. It forms a townscape feature in the conservation area, but its true nature is not immediately noticeable from the street, being more obviously to the rear face. The effect on the setting of the listed terrace would be limited, as the area to the rear does not contribute greatly to the architectural or historic significance of the building and its setting.
10. The works proposed to the listed wall, the effect on the character and appearance of the conservation area and on the setting of the listed buildings would nevertheless cause limited harm. The level of harm is at the lower end of 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
11. The proposal would provide an additional family house in an urban area close to services and transport, and would assist in the Government's stated aim at paragraph 47 of the Framework to boost significantly the supply of housing. The proposal would also bring about improvements to the listed building, although this is not promoted as 'enabling development', and local residents have said that it would reward neglect. However, the improvements would be a public benefit and weight attaches to them, being secured by a condition.
12. It is concluded that the nature of the view is not of sufficient significance as to preclude the development, and that the works to the boundary wall do not affect the significance of the listed building, its setting or the conservation area other than would be outweighed by public benefits.

Living Conditions

13. There is a planning history of a previous proposal and the Officer's Report and the appellant's Statement provide information on the changes that have been incorporated in the present proposal to seek to overcome the previous objections. Two limbs remain in the present reasons for refusal, that concerning sunlight was stated in the terms *'the applicant has failed to demonstrate that the proposal would not result in a loss of sunlight for the occupiers of 103 Roundhill Crescent and 4 D'aubigny Road'*, and the alleged overbearing and oppressive effect.
14. On the first, the appellant has provided further information dated 20 February 2017 which shows that due to the orientation of the proposed building relative to sensitive receptors, the proposal would accord with Building Research Establishment guidance criteria. Observations at 12 noon indicated that the proposed building would be unlikely to any effect until late on in the day. Clearly, as a Councillor is quoted as saying, there would be times when the sun would be obscured by the proposed building. But, Policy QD27 does not seek to protect the absolute amount of sunlight at any point, rather it seeks to avoid material nuisance and loss of amenity to existing or adjacent users, residents and occupiers. There would be change with regard to the sunlight reaching neighbouring properties, but not so as to be contrary to Policy QD27 in this urban area.

15. Turning to the matter of the alleged overbearing and oppressive effect, the rear garden to 4 D'aubigny Road extends a short way behind the house and appears to be at a higher level than the adjoining land. The proposed building would be narrower at the rear than at the front and the relationship here would be similar to that of a neighbouring house in a terrace. Whilst it is the case that no such house exists at present, the relationship would not be harmful in planning terms and the outlook from the rear of number 4 would remain that of the view referred to in the first main issue. Sufficient open aspect would remain so that no undue harm would occur to the occupiers of number 4 in the terms of Policy QD27.
16. The rear gardens to the flats at 103 Roundhill Crescent are however in a different relationship, and it is noted that drawing P/121 states that the levels to the adjoining property have not been surveyed. The land registry plan submitted by the occupier of the second floor flat at 103 Roundhill Crescent shows their garden to be substantially below the level of both the patio of 4 D'aubigny Road and the rear wall of the proposed house, notwithstanding the new house being proposed to be a step down from number 4. It is the case that the building now proposed would be nearer the common boundary than previously.
17. In addition, the garden to the upper flat forms only a part of the full depth of the open space behind number 103; the part to the far north end. As a result the entire garden that the occupiers have for their use would be immediately adjacent to and to the east of the proposed rear wall, and at a lower level. The proposed dwelling would appear overbearing and oppressive in their outlook, seriously eroding the enjoyment of the garden at this lower level. The immediate proximity of the proposed two storey rear wall would be too close and too high in comparison to the amount of garden available to the neighbouring occupiers.
18. The reason for refusal makes no reference to privacy. The Officers' report refers at paragraph 8.16 to the rear, east facing windows, but considers the relationship with the habitable space at Roundhill Crescent oblique, and that the flats themselves would not be overlooked. This does not appear to take account of the levels or the matter of which parts of the neighbouring garden are available to which occupiers. It is unclear what the Councillors were directed to at their site visit. Nevertheless, proposed condition 12) would require that *'the lower panes of the first floor east elevation window shall be obscure glazed and thereafter retained as such'* presumably to protect the occupiers of the garden to 103. No mention is made of the ground floor kitchen/diner window which would have a more direct line of sight over the garden allocated to that upper flat and is placed on or near the mutual boundary. To seek obscure glazing here in addition would risk being unreasonable in adversely affecting the living conditions of future occupiers, protected as they are under Policy QD27.
19. Whilst not a reason for refusal, the relationship does appear harmful and contrary to Policy QD27, that view being tempered only by the fact that the patio of 4 D'aubigny Road already looks over this part of the adjoining garden. Traditionally it could be that the area of garden immediately outside the rear of a dwelling would be regarded as the most sensitive to overlooking, but here the only area of garden available to the occupiers of the upper flat would be seriously compromised.

20. To conclude on this main issue, the proximity of the rear wall, now closer than previously, would adversely affect the outlook from the garden to the upper flat at 103 Roundhill Crescent and would appear overbearing and intrusive. The privacy of that garden would be severely compromised. The proposal fails to reach the standard sought in Policy QD27 and paragraph 56 of the Framework.

Conclusions

21. Whilst the significance of designated heritage assets would be harmed, the level of this harm would be at the lower end of the long 'less than substantial' scale and the public benefits would outweigh that harm as provided for in the Framework.
22. However, the now nearer proximity of the rear wall to the only part of the garden available to the occupiers of the second floor flat at 103 Roundhill Crescent would cause harm to the outlook from the garden and the wall at a higher level would appear intrusive and overbearing. Whilst not identified by the Council, the risk of privacy being compromised adds to the conclusion that the rear of the proposed dwelling would be harmful in the terms set out in Policy QD27 and would not be of the standard sought in the Framework. For the reasons given above it is concluded that Appeal A for planning permission should be dismissed.
23. In the absence of the benefits that had been weighed in the balance with regard to the harm to the listed 'bungaroosh' wall, the proposed work would fail to accord with Policies HE1 and HE6 or the stated sections of the 1990 Act and the work that is the subject of the listed building appeal should not be permitted. For the reasons given above it is further concluded that Appeal B for listed building consent should fail.

S J Papworth

INSPECTOR