
Appeal Decision

Site visit made on 25 July 2017

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 16 August 2017

Appeal Ref: APP/Q1445/W/17/3173703
72 St James's Street, Brighton BN2 1PJ

- 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 John Walsh, Frank Developments Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/06552, dated 20 December 2016, was refused by notice dated 1 March 2017.
 - The development proposed is the construction of an additional storey to create 1 no. one bedroom maisonette (C3) incorporating part change of use of retail floorspace (A1).
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Decision

1. The appeal is allowed and permission is granted for the construction of an additional storey to create 1 no. one bedroom maisonette (C3) incorporating part change of use of retail floorspace (A1) at 72 St James's Street, Brighton BN2 1PJ, in accordance with the terms of the application, Ref BH2016/06552, dated 20 December 2016, subject to the attached schedule of conditions.

Main Issues

2. The main issues are:
 - The effect of the proposal on the living conditions of the occupiers of the flats in No 12 Lower Rock Gardens in relation to outlook and light;
 - Whether the proposed maisonette would provide acceptable living conditions for future occupiers; and
 - Whether the proposal would compromise the viability of the retail use.

Reasons

3. The proposal is for an additional storey to be added to No 72, currently a two storey building with a basement situated between four storey buildings on the southern side of St James's Street within the East Cliff Conservation Area. The proposal would replicate the materials, parapet and window opening of the existing building, thus reflecting its existing character. Due to the unusually small scale of the existing building within the street scene there is no dispute that the proposal would complement nearby buildings and preserve the character and appearance of the conservation area. The additional storey together with the first floor would be used as a maisonette with the ground and basement floors being retained in retail use.

Living conditions

4. Immediately to the south of No 72 runs the rear yard and dining room/kitchen wing of the basement flat of No 12 Lower Rock Gardens, and the similar rear wing of the ground floor flat above which is also used as a dining room/kitchen. Raising the height of the building by an additional storey would affect the outlook from the rear yard and the windows in the two wings, and to a lesser extent the outlook from the rear facing lounge windows of the two flats in the main rear elevation. It is understood that the rear windows of the flats at first floor level and above serve bedrooms and are therefore less affected.
5. However, the rear yard is small, relatively narrow and is already situated next to what appears to be a three storey building. Given the sharp upwards angle of view of the existing building as seen from the yard a further storey would only obscure a small additional amount of sky and only add to the existing overbearing character of the building to a limited degree. The outlook from the windows in the wing and adjacent lounge would also only be incrementally affected due to the sharply upwards angle of the view.
6. In relation to the outlook from the corresponding windows in the ground floor flat of No 12 the upwards angle of view would be less and the amount of sky lost rather more. However, the new storey would still only have an incremental effect on the outlook from the windows which is already substantially blocked by the top floor of the existing building.
7. Importantly, the outlook from the rear yard, the dining room/kitchen wings and other windows is already seriously affected by the long side wall of No 71 St James's Street which runs behind a narrow passage to the rear and is currently two storeys higher than No 72. The sense of enclosure in the yard is also affected by the five-storey rear elevation of No 12 itself. In this heavily built up and enclosed context the further slight loss of outlook would only marginally affect the living conditions of the occupiers of the flats in No 12.
8. For the same reasons the loss of daylight to the yard and windows concerned would be minimal and, because No 72 lies to the north, any loss of direct sunlight would also be small.
9. For these reasons the proposal would not significantly harm the living conditions of the occupiers of the flats in No 12 in relation to outlook or light. The proposal would therefore comply with Policies QD14 and QD27 of the Brighton & Hove Local Plan 2005 (BHLP) which preclude extensions to existing buildings which would result in significant loss of outlook, daylight/sunlight or amenity to adjacent occupiers.

Living conditions of future occupiers

10. The proposed maisonette would comprise about 27.5 m² gross floor area of accommodation over two floors. The first floor bedroom would be about 8 m² in size and the second floor living room/kitchen/shower room would be about 12 m². The gross floor area would therefore be significantly less than the 37 m² nationally prescribed space standard for single bedroom flats, but these standards are not adopted as policy by the Council and as the appellant points out apply to newly-built rather than converted dwellings.
11. The indicative layout shows a double bed with other furniture could readily be accommodated within the bedroom although the layout of the main living room

would be very tight with little space for seating, dining table and television alongside the kitchenette and shower room. Nevertheless, the appellant has supplied details of several one bedroom flats and studio apartments which have been sold recently in Central Brighton with floor areas of 21-27 m² and even one as small as 18 m². The Council has not commented on this evidence which suggests that, in an area of high prices, even though the maisonette would certainly be small, it would still meet a housing need.

12. For these reasons the maisonette would provide acceptable living conditions for future occupiers in compliance with Policy QD27 of the BHLP which requires development to provide suitable amenities for the proposed occupiers.

Viability of retail use

13. The existing property is currently vacant but has a shop front, has been used for retail purposes in the past and lies within the St George's Road local shopping centre. In this area Policy CP4 of the Brighton & Hove City Plan Part One 2016 (BHCPP1) and Policy SR6 of the BHLP seek to protect A1 uses to maintain an active shopping frontage along the street.
14. When last in use both the first floor and basement of the property provided storage and ancillary space in support of a retail use on the ground floor. The proposal would involve the change of use of the first floor to residential leaving just the basement as ancillary/storage space to support the ground floor unit which would only be about 21.3 m² in size.
15. The Council argue that the viability of the resulting retail unit would be threatened due to its smaller size, but this is only assertion. The appellant has supplied details of five retail and cafe premises on or near St James's Street with similar or smaller floorspace which are trading successfully. These are a hairdresser at No 80a (12.2 m²), locksmiths at No 76 (27.8 m²), café at No 85 (21.8 m²), bakery at No 105 (10.4 m²) and tea rooms at No 15a Madeira Place (13.9 m²). The Council does not dispute this evidence which indicates there is a continuing market for small units in this part of Brighton.
16. For these reasons the proposal would not compromise the retail use of the building and would comply with Policy CP4 of the BHCPP1 and Policy SR6 of the BHLP which seek to protect such uses.

Other matters

17. There would be no overlooking as a result of the proposal, indeed the existing first floor window which overlooks the rear yard of the basement flat in No 12 would be blocked up or obscure glazed. The disruption during the construction period would only be temporary.
18. The Council requested two conditions should the appeal be allowed to require the submission and approval of the details of the second floor window and the decorative plaster features. Although the appellant considers that sufficient details have already been provided these are included to enable the Council to ensure the satisfactory appearance of the development. Conditions are also necessary to ensure matching materials are used, to impose the standard implementation time limit and to define the plans which have been approved in the interests of certainty.

19. Finally, the Council request that the scheme should be amended to omit the removal of the historic first floor window. This may erroneously refer to the front facing window which is to be retained. Alternatively, it may refer to the small rear facing window which is to be removed to avoid overlooking. This issue could equally be resolved by the installation of obscure glazing and a suitable condition is included should this be the preferred approach¹.

Conclusion

20. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0409.EXG.001 rev B, 0409.EXG.002 rev B, 0409.EXG.003, 0409.PL.101, 0409.PL.102 and 0409.PL.103.
- 3) The external materials to be used in construction of the development hereby permitted shall match those of the existing building.
- 4) No development shall take place until full details of the proposed second floor window and reveals and cills including 1:20 scale elevational drawings and sections and 1:1 scale joinery sections have been submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out and completed fully in accordance with the approved details and retained as such at all times thereafter.
- 5) No development shall take place until full details of the proposed decorative plaster features have been submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out and completed fully in accordance with the approved details and retained as such at all times thereafter.
- 6) Notwithstanding the submitted plans the rear facing first floor window shall be retained and fitted with obscure glass prior to first occupation of the maisonette hereby permitted and retained as such at all times thereafter.

¹ This condition could be deleted by agreement of the Council if blocking up is preferred.