



Appeal Decision

Site visit made on 16 July 2019

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/Q1445/W/19/3228479

Flat 31 Cavendish House, 138 Kings Road, Brighton BN1 2JH

- 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 Rubina Altaf against the decision of Brighton and Hove City Council.
 - The application Ref BH2018/03469, dated 6 November 2018, was refused by notice dated 15 February 2019.
 - The development proposed was originally described as 'development of existing seventh floor rear flat roof in an accessible terrace'.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to flat roof to form roof terrace incorporating replacement of existing window with access door and installation of glass balustrading to replace railings at Flat 31 Cavendish House, 138 Kings Road, Brighton BN1 2JH in accordance with the terms of the application, Ref BH2018/03469, dated 6 November 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL002; PL003; 1298 PL001; 1298 PL004; 1298 PL005; 1298 PL006; 1298 PL007; 1298 PL008; 1298 PL050; 1298 PL051; 1298 SU001; 1298 SU002; 1298 SU003; and 1298 SU004.
 - 3) The glass panels of the new balustrades hereby permitted shall be transparent and colourless.
 - 4) The roof terrace hereby approved shall not be brought into use until the existing railings on the flat roof at the rear of the building have been removed, and the new balustrades hereby permitted have been installed in accordance with the details shown on the approved plans.

Procedural Matters

2. Notwithstanding the description of development set out in the banner heading, which is taken from the planning application form, it is clear from the plans and accompanying details that the development comprises alterations to the flat roof to form roof terrace incorporating replacement of existing window with

access door and installation of glass balustrading to replace railings. The Council dealt with the proposal on this basis and so shall I. Furthermore, the appellant's planning agent has confirmed that the spelling of the appellant's name on the appeal form is incorrect and it should be as shown on the planning application form.

Main Issues

3. The main issues are:

- Whether the proposed development would preserve or enhance the setting of nearby listed buildings;
- Whether the proposed development 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 the occupiers of neighbouring properties at Bedford Towers, with particular regard to privacy.

Reasons

Setting of Listed Buildings

4. In considering proposals for planning permission, the duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard must be had to the desirability of preserving the setting of listed buildings. Paragraph 193 of the Framework states that "*great weight should be given to the [designated heritage] asset's conservation*".
5. The proposed development would be located to the rear of Nos 1 – 18 Oriental Place, which is a Grade II* listed terrace. The stucco terrace has a grand palace-fronted street-facing elevation, which includes attractive architectural detailing, and the architectural significance of the heritage asset is appreciated from its standing in the street scene. The appeal site, owing to its height and bulk, appears dominant in the surrounding area and makes no positive contribution to the setting of the listed building. The proposed roof terrace would be located to the rear of the listed building and would be positioned a sizeable distance away at a higher level. There would be no views of the roof terrace from the street where the architectural significance of the palace-fronted street elevation is appreciated. As such, the proposed development would have a neutral effect on the setting of the listed building.
6. The appeal site is also located adjacent to a terrace of Grade II listed buildings in Cavendish Place. The closest building at Nos 1 and 2 Cavendish Place is a stucco 4 storey building over a basement which has 2 elevations visible in the street scene. The southern elevation looks over a car park facing King Street and the eastern elevation faces the street in Cavendish Place. The architectural significance of the building arises from the detailing on the street-facing elevations, which, among other things, includes banded rustication at ground floor; balconies with cast-iron railings at first floor; Corinthian pilasters at first and second floor; entablature; and ornamental mouldings. The overall composition creates a pleasing appearance.

7. The appeal property appears dominant in relation to Nos 1 and 2 Cavendish Place due to its height and bulk, and its position adjacent to the listed building. The 7 storey rear wing of the appeal property adjoins Nos 1 and 2 Cavendish Place and its flat roof protrudes higher. As such, the appeal property has a poor relationship with the listed building and it has a negative effect on its setting. The proposed balustrades would replace the existing railings that currently enclose the flat roof and would be set back 1m from the edge of the roof. Taking this into account, there would be limited views of the proposed balustrades from King Street/Cavendish Place. The proposed balustrades would be lightweight in appearance and would be less noticeable than the existing metal railings due to their set back. Furthermore, it is unlikely that domestic items would be visible on the flat roof from the public realm due to the height of the roof terrace and the set back of the balustrades from the edge of the roof. Therefore, in comparison to the existing situation, the proposed development would have a neutral effect on the setting of the listed building.
8. For the above reasons, I find that the proposed development would preserve the setting of the nearby listed buildings and so the proposal accords with saved Policy HE3 of the Brighton and Hove Local Plan 2005 and Policy CP15 of the Brighton and Hove City Plan Part One 2016, which seek to preserve the setting of listed buildings.

Conservation area

9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservations areas. Paragraph 193 of the Framework states that "*great weight should be given to the [designated heritage] asset's conservation*".
10. The Regency Square Conservation Area includes a number of set-piece squares and terraces that are positioned to allow views towards the seafront. The scale and architecture of buildings in the Conservation Area is varied. The appeal site is a modern tower block that does not reflect the general height, bulk or materials of other buildings in the Conservation Area. The proposed balustrades would be modern in style, which, in my view, is acceptable given the modern appearance of the existing building. Furthermore, there would be limited views of the roof terrace and balustrades within the Conservation Area due to the height of the roof terrace above other buildings and the set-back of the balustrades from the edge of the roof. For these reasons, views of domestic items on the roof terrace are not likely to be conspicuous in the surrounding area. I have also had regard to the fact that the proposal would result in the removal of existing railings that are currently positioned around the edge of the flat roof.
11. Taking the above factors into account, I find that the proposed development would have a neutral effect and therefore it would preserve the character and appearance of the Regency Square Conservation Area. The proposal therefore complies with saved Policy HE6 of the Brighton and Hove Local Plan 2005 and Policy CP15 of the Brighton and Hove City Plan Part One 2016, which seek to preserve or enhance the character or appearance of conservation areas. The proposed development also accords with saved Policy QD14 of the Brighton and

Hove Local Plan 2005, which, amongst other things, seeks to ensure that alterations to existing buildings are well designed, sited and detailed.

Living conditions

12. The appeal site is located in an urban area where a degree of overlooking is to be expected. Bedford Towers is a tower block located on the opposite side of Cavendish Place, which maintains a sizeable gap to the appeal site. The proposed roof terrace would allow views towards the habitable windows and balconies at Bedford Towers, however, given the urban context of the area and the sizeable distance that the proposed roof terrace would maintain to the neighbouring windows and balconies, I find that the proposal would not cause a significant loss of privacy to the occupants of the neighbouring residential properties. As such, the proposed development would not conflict with saved Policy QD27 of the Brighton and Hove Local Plan 2005.

Other Matters

13. The occupiers of neighbouring properties have raised a number of issues, which I have had regard to. Issues relating to land ownership, freeholder consent, maintenance and access to the flat roof have been raised, however these are civil matters and are not within my jurisdiction. Furthermore, in relation to property values, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property. Neighbours have expressed concerns that the use of the roof terrace would cause noise nuisance, however, given the urban context of the appeal site where a number of nearby balconies and roof terraces are evident, I am satisfied that the proposed roof terrace would not cause significant noise disturbance in the surrounding area. Furthermore, the roof terrace would not be positioned in close proximity to neighbouring habitable windows and so it would not cause a significant loss of privacy.

Conditions

14. The Council has not provided a list of suggested conditions. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interests of certainty. In order to preserve the character and appearance of the Conservation Area and the setting of listed buildings, I have attached a condition to require the glass panels of the new balustrades to be transparent and colourless. For the same reason, I have also imposed a condition requiring that the proposed roof terrace shall not be brought into use until the existing railings on the flat roof have been removed and the new balustrades have been installed in accordance with the approved plans.

Conclusion

15. For the reasons given above I conclude that the appeal should be allowed.

C Osgathorp

INSPECTOR