
Appeal Decision

Site visit made on 7 August 2019

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/Q1445/Y/19/3221328
45 Norfolk Square, Brighton BN1 2PE

- 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 Mr Cohen against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02999, dated 28 September 2019, was refused by notice dated 21 November 2018.
 - The works proposed are the installation of railings to form a roof terrace.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A new version of the National Planning Policy Framework (the Framework) was published in February 2019 post-dating the Council's decision on the application that led to this appeal. The Framework sets out¹ that it is a material consideration relevant to decision-taking from the date of its issue, and I will take it into account in my assessment of the appeal's merits. As the elements of the Framework of most relevance to the appeal have not been changed since the previous version of the document, no parties would be prejudiced as a result of me proceeding on this basis.

Main Issues

3. The main issues in this appeal are whether the proposed works would preserve firstly, their host Grade II Listed Building and special interest, and secondly, the character or appearance of the Regency Square Conservation Area.

Reasons

Special Interest and Significance

4. Situated in the Regency Square Conservation Area, the appeal property is part of a terrace (Nos 35 to 45 consecutive) included on the statutory list at Grade II. The terrace has a high degree of uniformity, in terms of scale, elevational pattern and roof treatment, and the Listing Description notes that, with the exceptions of Nos 37 and 38, its roofs are obscured by a parapet. This parapet is a key element of the terrace's street-facing composition serving to mask the functional appearance of its roofs behind the polite elegance of its facade.

¹ At paragraphs 2 and 212

5. These aspects of Nos 35 to 45, taken together with the listed terraces on the other sides of the public open space which the appeal property addresses impart a unified architectural character to Norfolk Square. It is for these reasons that the annotation "GV" is included on the Listing Description, indicative that the group value of the appeal terrace is of particular note, and in these ways also it contributes to the character and appearance of the Regency Square Conservation Area, and the setting of the other terraces with which the appeal property is inter-visible. Insofar as relevant to the works subject to the appeal these are the key elements of the building's significance and special interest.

The proposed works

6. The proposed works, as described above, would see the installation of railings, which the plans indicate would be 1.1m in height, on the flat roof of No 45. They would be set back from the parapet, and set in from the rear edge of the roof, apart from where they would form a corridor to an existing spiral staircase from a rear window of No 45.

The effect of the proposed works

7. I note that the Council considers the flat roof at the appeal property and the spiral staircase to the rear to be unauthorised and the appellant has supplied no substantive evidence to contradict this position. Indeed I saw that properties to the side of No 45 have M-shaped hipped roofs with a low ridge line which are hidden by the parapet in views from the front. Consequently, the existing roof of the appeal property already diverges considerably from the character of the wider terrace.
8. Despite their set back, the proposed railings would be visible to some extent from public and private viewpoints in Norfolk Square, and would impart a cluttered appearance above the parapet line of the appeal property. For these reasons, the proposed works would not only undermine the architectural composition of the appeal property's street-facing elevation, but also erode the wider uniformity of the terrace to the clear detriment of its group value.
9. Accordingly, mindful of the duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990, these considerations lead me to the conclusion on these main issues that the Grade II Listed Building, its special interest and the character and appearance of the Conservation Area would not be preserved. For these reasons too the proposed works would conflict with Policies HE1, HE3 and HE6 of the Brighton and Hove Local Plan; and Policy CP15 of the Brighton and Hove City Plan Part One. Taken together, and amongst other things, these policies seek to ensure that proposals involving the alteration of listed buildings do not have adverse effects on their architectural and historic character, and that the character or appearance of conservation areas is preserved.

Other Matters

10. The appellant considers that the railings would have beneficial health and safety effects. However, it has not been demonstrated that the use of the roof as a terrace is an authorised one in planning terms. Consequently, the public benefits that would result from the appeal scheme in these regards weigh only minimally in its favour.

11. The appellant considers that the proposal would not lead to a material increase in noise and disturbance, or adversely effect the privacy of the occupants of adjacent dwellings. I note also the view that in these terms the proposal would not conflict with the development plan. However, the lack of harm and development plan conflicts in relation to these matters are not positive benefits of the scheme and therefore these considerations have only a neutral effect on the overall balance.

Planning Balance and Conclusion

12. The Framework anticipates that once a finding of harm to the significance of a heritage asset, such as a listed building or conservation area, has been reached, then the magnitude of that harm should be assessed. In the current case, the proposed works would clearly cause less than substantial harm to the significances of the host Listed Building and the Conservation Area. Nevertheless the Framework sets out² that great weight should be given to a heritage asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Moreover, the harm should be weighed against the public benefits of a proposal, including where it would secure the optimal viable use of a heritage asset³.
13. No material has been supplied to suggest that the proposal would result in the optimum viable use of the Listed Building. Moreover, the public benefits of the proposed works do not tip the balance in favour of the appeal scheme when set against the great weight and importance I attach to the harm that would be caused to the significance of the heritage assets. Consequently, the proposed works would conflict with the Framework insofar as, amongst other matters, it requires heritage assets to be managed in a manner appropriate to their significance.
14. Accordingly, for the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR

² At paragraph 193

³ Per paragraph 196 of the Framework