



Appeal Decision

Site visit made on 10 December 2019

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2019

Appeal Ref: APP/Q1445/D/19/3240808

6 Wyndham Street, Brighton BN2 1AF

- 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 Tim Hazeldon against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/02269, dated 29 July 2019, was refused by notice dated 10 October 2019.
 - The development proposed is installation of hinged access hatch to roof terrace and addition of obscure glazed balustrade and screening.
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Decision

1. The appeal is allowed and planning permission is granted for installation of hinged access hatch to roof terrace and addition of obscure glazed balustrade and screening at 6 Wyndham Street, Brighton BN2 1AF in accordance with the terms of the application, Ref BH2019/02269, dated 29 July 2019, 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: 2166/01 and 2166/02A.
 - 3) The development hereby permitted shall not be used until details of the materials to be used for the balustrades have been submitted to and approved in writing by the local planning authority and once installed the approved materials shall be retained thereafter.

Procedural matters

2. During the appeal process the then applicant submitted amended plans revising the location of the proposed front balustrade further away from the front elevation. The Council made its decision based on these amended plans and I will also use them.

Main Issues

3. The main issues are the effect on:
 - heritage assets, that being:

- the setting of 7 to 19 Wyndham Street¹, a Grade II listed building,
- the setting of 5 Wyndham Street, a locally listed building, and
- the East Cliff Conservation Area (the ECCA); and
- the living conditions of the occupiers of adjoining properties in terms of noise, disturbance and privacy.

Reasons

Heritage effects

4. The appeal property is located in the ECCA. This covers the area to the east of the main pier along the foreshore and into the built up area. It was largely developed between the 1780s and the 1880s.
5. As identified in the ECCA Study and Enhancement Plan from 2002 the built form is predominantly made up of terraces, although this may consist of continuous built development constructed at different times and linked together rather than buildings built contemporaneously. The buildings vary between two and five storeys but are generally fairly uniform in each street. The architecture is predominantly Regency in style, although not strictly Regency in period and this, and its predominantly residential use, defines the character and appearance of the ECCA and thus its significance.
6. The appeal property has three storeys with a flat roof. It has a series of bay windows on the front elevation. The building to the north, 40 to 42 Upper St James's Street is taller at four storeys with an area used as a balcony at a higher level above the flat roof, although the Council's report on the application queried whether this has planning permission. To the south is the Grade II listed 7 to 19 Wyndham Street, which is three storeys over basements, with a pitched roof behind a parapet. I note from the listing description that the interior was not surveyed so that its significance as a listed building must derive from its external architectural and historic interest. There is a variation in the roof forms in that small dormers could be glimpsed from street level in a number of the front roof planes. The properties have chimney stacks on the party walls towards the front of the buildings which also adds to the variety of the street scene.
7. On the west side of Wyndham Street there is a greater variation in building form. Directly opposite the appeal site is No 5, a two storey dwelling with a pitched roof set back from the footway behind a low wall and front courtyard. This is locally listed and thus, in the terms of the National Planning Policy Framework (the Framework), is a non-designated heritage asset. Further to the south the properties are on the back edge of the highway with a variation in height between two and three storeys although there are taller buildings at the southern, sea, end.
8. The proposal is to utilise an existing, although to be enlarged, access to the roof and use the roof area as a terrace. Tinted, glazed balustrades would be constructed to front, rear, on the southern side and around three sides of the access hatch. Most of these would be 1.145m high although 1.8m high to the rear. As amended, the front balustrade would be set back from the front

¹ The numbers are consecutive and this represents 13 dwellings, although listed as a single listed building.

elevation; approximately level with the front of the chimney stack on No 7. I note the comments of the Council's Heritage Team, of which I have been provided, pre-date the submission of the amended plans.

9. Although the front balustrade would be seen from street level, due to its set back from the front elevation it would be little more than glimpsed from the public domain. Even not taking into account the balustrades at 40 to 42 Upper St James's Street and 3 Wyndham Street, which the Council asserts may not be lawful, it would integrate into the variation in building form at roof level which already exists in this area. Although not of Regency style the low, lightweight nature of the structure would clearly be of a different period and would not harm the overall architectural consistency of the ECCA or the settings of the adjoining and nearby heritage assets. It would therefore preserve the character and appearance of the ECCA and its significance and the setting and significance of the adjoining heritage assets.
10. The other proposed balustrades could not be seen from the public domain and, because of their location and nature identified above, would have no material effect on the character and appearance of the ECCA or its significance or the settings or significances of the adjoining listed and locally listed buildings. These heritage assets and their settings, as appropriate, would therefore be preserved.
11. Below I consider the effect of the use of the roof space and conclude that it would not harm the living conditions of the occupiers of adjoining dwellings. Therefore, the use of this area would be in keeping with, and thus preserve, the predominantly residential character of the ECCA and the use would not harm the settings of the listed building and locally listed building.
12. Overall the proposal would preserve the settings and thus the significance of the listed 7 to 19 Wyndham Street and of the locally listed 5 Wyndham Street, and preserve the character and appearance of the ECCA. Great weight and special regard or attention should be given to the conservation of heritage assets in line with paragraph 193 of the Framework and relevant legislation.
13. The proposal would therefore comply with Policy CP15 of the Brighton and Hove City Plan Part One and Policies QD14, HE3 and HE6 of the Brighton and Hove Local Plan (the BHLF) which require the city's historic environment to be conserved and enhanced, that extensions, including roof extensions, would be well designed, sited and detailed in relation to the property to be extended, adjoining properties and to the surrounding area, not have an adverse impact on the setting of a listed building, and preserve or enhance the character or appearance of a conservation area. It would also comply with paragraph 193 of the Framework as set out above.

Living conditions

14. Although there is an access hatch to the roof space, the lack of a balustrade makes it unlikely that the roof area would be used intensively at present. The proposal would increase this likelihood, leading to an increase in likely noise and disturbance. However, the issue is not whether there would be an increase but whether this increase would cause material nuisance and loss of amenity or where it is likely to be detrimental to human health. This is the test set out in Policy QD27 of the BHLF. The Council does not assert that the proposal would be detrimental to human health.

15. At the site visit I went up on to the roof and inspected the general area. Apart from the balconies identified above which the Council queries may not be lawful, I noted a number of other roof terraces, particularly on the roofs of outriggers of some of 7 to 19 Wyndham Street and elsewhere. The Council does not report any recorded incidents on these terraces giving rise to complaints or records of nuisance or loss of amenity.
16. I appreciate that the proposed roof terrace would be larger than the roof terraces on the adjoining properties. However, this area is an urban area with an existing background level of noise and disturbance. I consider that normal activity ancillary to the use of the appeal property as a dwelling would not give rise to a harmful level of noise and disturbance to the living conditions of adjoining occupiers or to the wider area.
17. As regards potential overlooking, the front balustrade would be set back from this elevation which would restrict views to the west to higher levels. In any event, the front elevations of No 5 and the other properties on the west side of Wyndham Street are already in the public domain so there would be no material increase in overlooking. To the rear the proposed balustrade would be 1.8m high which would prevent harmful views towards the rear of the properties in Charlotte Street.
18. Consequently, the proposal would not give rise to harm to the living conditions of the occupiers of adjoining properties in terms of noise, disturbance or overlooking. As such it would comply with Policy QD27 of the BHLP as set out above. It would also comply with paragraph 127 of the Framework which states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Conditions

19. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty.
20. I have also imposed a condition requiring the precise materials for the balustrades to be approved in order to ensure that they preserve the character and appearance of the ECCA and the settings of the listed building and locally listed building.

Conclusion

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

RJ Jackson

INSPECTOR