
Appeal Decision

Site visit made on 20 January 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 January 2020

Appeal Ref: APP/Q1445/W/19/3239217

44 The Cliff, Brighton BN2 5RE

- 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 Dr A Paoella against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/01183, dated 16 April 2019, was refused by notice dated 10 September 2019.
 - The development proposed is described as being for engineering operations to facilitate a sunken garden including extension of existing decked area, and retaining walls.
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Decision

1. The appeal is allowed and planning permission is granted for engineering operations to facilitate a sunken garden including extension of existing decked area, and retaining walls, at 44 The Cliff, Brighton BN2 5RE, in accordance with the terms of the application ref BH2019/01183, dated 16 April 2019, and the plan numbered 2137 01A Rev A, so far as it is relevant to the development hereby permitted.

Procedural Matters

2. The description of the proposed development given on the application form included the phrase 'full application (part retrospective)'. As this does not describe an act of development, I have omitted it from both the description in the banner heading above, and from my decision.
3. The scheme has been presented at appeal as relating to works within the 'curtilage' of a summerhouse. This summerhouse is located within the southern part of the garden space to the rear of No 44, which is subdivided from the northern part of the garden by a recently erected timber fence. The Council indicates that it has no record of permission having been granted for, or of the lawfulness otherwise being confirmed of, this summerhouse, for its residential use, or for the fence. It additionally notes the presence of 2 further buildings, for which it again indicates there is no record of planning permission.
4. I note the points made by the appellant in response. I also note reference to enforcement investigations. However, it is not the purpose of this decision to determine the lawfulness of the summer house or its use, that of the 2 additional buildings, or that of the fence, or indeed the acceptability in broader planning terms of any of the aforementioned buildings or structures. Therefore, notwithstanding the fact that they are shown on the submitted plan, my

reasons below, and my decision above, are strictly limited to the works for which planning permission has been specifically sought.

5. The works have been substantially undertaken, but remained unfinished at the time of my visit. Whilst the works so far undertaken have assisted in my assessment of the appeal scheme, my decision is based on the submitted plan.

Main Issues

6. The main issues are the effects of the development on:

- the character and appearance of the area, including the setting of the South Downs National Park (the NP); and
- the living conditions of current and future occupants of No 44 and adjoining properties, with particular regard to visual amenity.

Reasons

Character and appearance

7. The Council's first and second reasons for refusal relate to the character and appearance of the area: firstly the effect that the walls and astroturf would have on the landscape and the setting of the National Park, and secondly the effect that the balustrading would have on the streetscene to the south.
8. The site lies immediately adjacent to a golf course which forms a large open space set back from the sea front. The dwelling at No 44 and the boundary walls of the garden are visually conspicuous from within this open space given that they effectively define its western edge. The golf course does not lie within the National Park, and indeed the boundary of the National Park is located a considerable distance from the site. Insofar as any land located with it can be viewed from the site, this consists of high ground to the far north east.
9. A sunken lawn area has been formed within the site, and astroturf used to surface it. The particular reason why this should be considered to cause harm to the broader landscape is unclear, as the Council provides no explanation. This is however presumably related to its artificiality. Its synthetic nature is indeed obvious close up, but far less so from a distance.
10. The sunken lawn area lies below the level of the boundary walls, as too that of the ground level of the golf course beyond. As such it is not possible to see the astroturf from within the golf course. The distance between the site and land included within the National Park is itself so great, that even if it was possible to both distinguish the sunken lawn within the general view of the east end of Brighton, it would be impossible to identify the use of astroturf. In neither regard therefore does the design and appearance of the astroturf cause any harm.
11. The sunken lawn and spoil placed around its outer edge is retained by walls built from precast concrete panels and blocks. These have been painted various colours. Again, the reason why the walls should be considered to cause harm to the broader landscape is unclear, as the Council provides no explanation.
12. For the most part the retaining walls within the site are not visible from outside it. The main exception is a high, albeit narrow band of walling painted purple which runs along the western boundary of the site. This can be seen in

reasonably near views from within parts of the golf course. It is apparent that the main reason that it is noticeable is its colour. In this regard I am mindful that no control generally exists over the painting of such features. For this reason, and given that the walling is otherwise perceived firmly within the context of its developed setting, from whatever vantage point it is viewed, its design and appearance causes no unacceptable harm.

13. Properties along The Cliff back onto Marine Drive, otherwise designated the A259, which is located at a lower to the south of the site. In this location the road splits into 6 lanes, including a large central reservation. A footpath is located further to the south from which the backs of properties along The Cliff can be viewed. The streetscene is however otherwise entirely dominated by the road.
14. As ground levels rise towards the north, some of the installed balustrading can be viewed from the footpath. The view is however across a reasonably long distance, including the 6 lanes of the A259. Given that the balustrading is transparent it is not particularly noticeable. Furthermore, several other sections of glazed balustrading are evident on the rear elevations of dwellings to the west of No 44. As such the installed balustrading cannot be considered as either an alien or conspicuous feature. Indeed, insofar as the streetscene along the section of the A259 corridor in question holds any particular visual merit, the design and appearance of the balustrading causes no harm.
15. Interested parties have raised additional concerns with regard to harm caused to trees. It is however unclear which trees are the subject of this concern and whether the alleged harm has in fact already occurred. The Council does not otherwise share this concern. Given the lack of information, no basis exists for me to reach a different view.
16. For the reasons outlined above I conclude that the development does not, and would not cause unacceptable harm to the character and appearance of the area, including the setting of the National Park. It therefore complies with Policy SA5 and CP12 of the Brighton and Hove City Plan Part One 2016 which requires development to respect and not significantly harm the National Park or its setting; and Policy QD15 of the Brighton and Hove Local Plan 2005 (the LP), which sets out information requirements with regard to landscaping, and requires that adequate consideration is given to landscaping design.

Living conditions

17. The decision notice states that the development would have a detrimental impact on the amenities of the current and future occupants of No 44, and occupants of adjoining properties. It does not however state what these amenities are. Whilst the Council's appeal statement clarifies that visual amenity is of concern, it offers no further explanation of how the balustrading, astroturf and retaining walls would cause harm in this context.
18. The development essentially entails the landscaping of a private garden to the rear of No 44. In the absence of any explanation, I can see no obvious way in which this does or would harm the visual amenity of current or future occupants of No 44. I note that the Committee minutes record a concern expressed that the development would spoil the view from No 44. However even if this was a legitimate concern, none of the features in question restrict the elevated seaward view from No 44.

19. Based on views from within the site, visibility of the balustrading, astroturf and retaining walls from adjoining gardens is minimal to non-existent. Visibility of these features also remains very limited even in elevated long views from the upper floors of adjacent dwellings. Again therefore, no obvious harm is caused to the visual amenity of occupants of neighbouring dwellings.
20. Various additional concerns related to the living conditions of other occupants of dwellings in the area have been raised by interested parties. These include in relation to privacy, noise, and loss of light. These concerns do not appear to be shared by the Council. Indeed, even taking into account the raised ground level around the edge of the sunken lawn, none of the works in question cause obstruction of light or obviously enable overlooking; the latter given that the adjoining boundary to the west is well screened by vegetation. Furthermore, though the works themselves may have generated some noise, the landscaping itself does not.
21. For the reasons outlined above I conclude that the development both does not and would not have an adverse effect on the living conditions of current or future occupants of No 44 and adjoining properties. It therefore complies with Policy QD27 of the LP which otherwise restricts development that would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents or occupiers.

Other Matters

22. The Council has noted the fact that in excavating the site no provision was made for archaeological work. However, this was not a reason for refusal of permission, and no objection to the scheme was raised by County Archaeology during the determination of the planning application. There is therefore no substantive reason for me to believe that the scheme's impact on archaeology has been or would be unacceptable.
23. Interested parties have drawn attention to the local listing of 40 and 40a The Cliff, which can therefore be considered as a non-designated heritage asset. Nos 40/40a is a large early twentieth century villa whose significance largely resides in its historic associations and architectural design. The latter includes elements by Lutyens, including a sunken garden. The garden lies to the west of the site but is not visible from it. Indivisibility between part of the site within which works have taken place, and Nos 40/40a itself, is limited. Though reference has been made to the site having once formed part of land attached to 40/40a, and of its the eastern boundary wall having once formed that of 40/40a, I have been provided with very little evidence. The wall itself is retained as part of the scheme, and the site otherwise makes little obvious contribution to the significance of Nos 40/40a. On the basis of the evidence before me therefore, the development does not and would not cause harm to the setting of this non-designated heritage asset.
24. A broad range of additional concerns have been raised by interested parties. These include the safety and strength of the retaining walls, contamination, adverse effects on property values, breach of covenants and licences, damage to drainage and sewers, increased traffic, and harm to a conservation area. However, many of these are either private matters, or matters covered by other regulatory regimes. With regard to the remainder, no conservation area would be affected by the development, and other than during construction, no scope exists for the development to generate traffic.

Conditions

25. I have not applied a condition setting out the time limit for commencement of development given that this has already occurred. I have included reference to the approved plan within the decision, with the qualification that its approval applies only so far as it is relevant to the development permitted. This is for the reasons outlined in my procedural matters.
26. Given that the works relate to a private garden, the majority of which is not visible from outside the site, many elements of which have already been completed, and which I have found both are not and would not be harmful, I see no necessity for the Council's suggested landscaping condition. I have therefore not imposed it.

Conclusion

27. For the reasons set out above, I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR