



Appeal Decision

Site visit made on 6 November 2019

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2020.

Appeal Ref: APP/Q1445/W/19/3234764 85a Ditchling Road, Brighton BN1 4SD

- 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 Rob Hill of The Eventa Entertainment Group LTD against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/02402, dated 27 July 2018, was refused by notice dated 28 June 2019.
 - The development proposed is described as "conversion and extension of an existing four storey C1 use class holiday home into a C3(a) use class residential flats. To incorporate infill of existing 1 storey courtyard on ground floor then 3 further storeys above, leaving existing ground floor B1 office use class space untouched. Internal remodelling of the building for use as flats and alterations to external finishes and fenestration".
-

Decision

1. The appeal is allowed and planning permission is granted for conversion to form 4 no dwellings (C3) incorporating a 2 no storey rear extension, roof alterations to include a dormer window, associated internal and external alterations and revised fenestration at 85a Ditchling Road, Brighton BN1 4SD in accordance with the terms of the application, Ref BH2018/02402, dated 27 July 2018, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. Section E of the appeal form indicates that the description has been amended from that given on the application form. In the interests of clarity, I have, therefore, taken the description of development from the Council's decision notice and the appeal form rather than that found on the original application form. These documents describe the development as conversion to form 4 no dwellings (C3) incorporating a 2 no storey rear extension, roof alterations to include a dormer window, associated internal and external alterations and revised fenestration. The amended description reflects the revised plans which were submitted prior to the Council's decision. I have determined the appeal on the basis of the revised plans and the scheme as amended.
3. I attended the site at the specified time but was not met by the appellant or the appellant's agent. However, I was able to identify the property and assess all relevant considerations from public land. I therefore proceeded to complete the site visit unaccompanied. I am satisfied that I saw everything necessary to allow me to determine the appeal.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the host building and the wider area; including whether or not the proposal would preserve or enhance the character or appearance of the Valley Gardens Conservation Area.

Reasons

5. The appeal site, 85a Ditchling Road, occupies a corner plot at the junction of Ditchling Road and Kingsbury Street. The characters of the two streets are notably different; Ditchling Road is a wide busy road with an eclectic variety of building types, uses and designs whereas Kingsbury Street is a narrow side street characterised by terraces of fairly uniform properties.
6. In a reflection of the wider character of the streets, the elevations of the property are also markedly different. The building at 85a forms an attractive taller feature rising in height to the corner facing Ditchling Road. The building then steps down gradually to meet the, more modest, two storey terraces of Kingsbury Street. The elevation onto Ditchling Road has a grander character and appearance than that facing Kingsbury Street.
7. 85a Ditchling Road is situated within the Valley Gardens Conservation Area (CA) which appears to draw its significance from development in a linear pattern fronting areas of public open space. The Council's heritage officer comments that the area of the CA surrounding the appeal site has a more informal character than is present in other parts of the CA, whilst maintaining a general consistency of scale, proportion and materials. I would agree with this assessment.
8. I am required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
9. The proposal is to undertake a number of works including a two storey rear extension, roof alterations to include a dormer window, associated internal and external alterations and revised fenestration to facilitate the conversion of the building into four flats. The building currently houses an office on the ground floor which would not be altered as part of the proposal.
10. The proposal would not affect the linear pattern of development or the building's position in relation to the important area of public open space nearby. These are key elements in respect of the significance of the CA and retaining them would ensure that the character and appearance of the area is not affected in this respect. The elevation facing Ditchling Road would remain largely unaltered by the current proposal and a condition could ensure that the materials to be used would match those used in the existing building. The ridge height of the pitched roof behind the front parapet would be raised slightly and the window arrangement within the roof slope would be amended. The increased height would, nevertheless, respect the building line and would be compatible with the building's prominent position on the corner plot.
11. The Kingsbury Street elevation would undoubtedly be altered from the historic form of development which currently exists. The gap between 85a and the neighbouring two storey terrace would be filled by the proposal. However, the roof line of the infilled section would continue the stepped building line; it

would be lower than the highest point of 85a and higher than the neighbouring terrace. This step would facilitate the building's integration with the wider street scene and would ensure that it would not appear unduly prominent or visually jarring in this context.

12. The proposed infill would be a substantial addition to the property. Whilst I note that the extension would be wide, in my view, the design which continues the building line and respects the stepped heights, would ensure that the extension would be readily subsumed within the pattern of development. In my view, a narrower infill would, in fact, interrupt the flow of the street scene. I also consider that, despite its size, the proposal would appear as a subservient addition and would be sympathetic to the overall scale and proportions of the building. Furthermore, for these reasons, it would still be possible to read the history of the building and distinguish the grander Ditchling Road frontage from the smaller scale buildings on Kingsbury Street.
13. In the respects set out above, I consider that the proposal would maintain the general consistency of scale, proportion and materials in such a way so as to avoid harm to the character and appearance of the area and the significance of the heritage asset.
14. However, the alterations to the roof form of the gable end of the building are less sympathetic when viewed in the context of Kingsbury Street. The loss of the traditional gable and the introduction of hanging tiles would sit uncomfortably with the original building and would not be visually compatible with the host dwelling or the surrounding area. I also note that the pattern of glazing, including the windows within the roof slopes, would not be typical of other properties within Kingsbury Street.
15. These elements of the proposal would cause a limited degree of harm to the character and appearance of the area and would therefore fail to preserve or enhance the character or appearance of the CA.
16. Accordingly, the proposal would result in some conflict with policies CP12 and CP15 of the Brighton and Hove City Plan Part One, March 2016 (CP) and saved policies QD14 and HE6 of the Brighton and Hove Local Plan 2005 (LP). Amongst other things these policies taken together seek to promote well designed development which raises the standard of architecture and design in the city and conserves or enhances the city's built heritage and its setting. The proposal would also fail to comply with some guidance set out within the Brighton and Hove City Council Local Development Framework, supplementary planning document 12, design guide for extensions and alterations, 2013 (SPD). Guidance within the SPD includes a section which states that proposals that affect heritage assets will be expected to demonstrate a clear understanding of the importance of the historic form, layout, design and detailing of these buildings, and demonstrate a high level of design and detailing that would preserve or enhance their special character for future generations.

Planning Balance

17. In addition to the requirement under section 72 of The Act, the CA is also a designated heritage asset as defined by the National Planning Policy Framework (the Framework), which seeks to ensure that heritage assets are conserved in a manner appropriate to their significance.

18. In this case due to the small scale of the proposal and the limited elements of the scheme which would be harmful, the proposed development would cause less than substantial harm to the significance of the designated heritage asset. Paragraph 196 of the Framework indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. In this instance, the development would provide new homes in a location with good access to facilities and local transport. There is no dispute that the Council does not currently have a five year housing land supply. In this light and considering the importance attached to the objective of significantly boosting the supply of homes set out in The Framework, the benefits associated with additional housing units are a public benefit which attracts significant weight.
19. I also acknowledge the economic benefits of engaging local professionals, trades and suppliers and the ongoing benefit of the occupiers of the proposed dwellings utilising local facilities. Whilst these benefits are limited by the relatively small scale of the proposal they, nevertheless, carry some weight as public benefits.
20. Consequently, the public benefits of the scheme I have identified would outweigh the harm to the designated heritage asset and the proposed development passes the paragraph 196 balancing exercise.
21. Due to the lack of a five year housing land supply, a presumption exists in favour of granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or, specific policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development.
22. In this instance, the proposal is within a CA, however, as set out above, the public benefits outweigh the less than substantial harm to the designated heritage asset and as such no clear reason for refusing the development exists and the proposal does not fall within the footnote 6 exceptions of paragraph 11 d) of the Framework.
23. I have not identified any other adverse impacts of the proposal which would be sufficient to significantly and demonstrably outweigh the benefits set out above.
24. As set out in the Planning and Compulsory Purchase Act 2004 (as amended) the determination of this planning appeal must be made in accordance with the development plan unless material considerations indicate otherwise. In this instance, notwithstanding a limited degree of conflict with the development plan, I conclude that the material considerations I have outlined above would be such so as to indicate that the development should be approved.

Conditions

25. In the interests of precision and clarity I have undertaken some minor refinement to the suggested wording of the conditions proposed by the Council.
26. Alongside the standard time limit condition, I have imposed a condition specifying the relevant plans as this provides certainty. In order to ensure that the development has a satisfactory appearance, particularly given the sensitive location of the development, I have imposed a condition requiring details and

samples of the materials to be used to be submitted to and approved in writing by the Council. I have also imposed conditions requiring the rainwater goods, soil and other waste pipes to be in cast iron and painted black and setting out expectations regarding the new render for the same reasons.

27. In order to safeguard the living conditions of the occupiers of neighbouring dwellings, I have imposed a condition requiring the rear dormers to be obscure glazed and non-opening below a certain height. Similarly, I have imposed a condition restricting the use of the flat roof over the extensions in order to protect the living conditions of neighbouring residents.
28. Additionally, in the interests of securing satisfactory living conditions for future occupiers of the dwellings hereby permitted, I have imposed a condition to secure the provision of satisfactory facilities for the storage of refuse and recycling.
29. In order to ensure that the development complies with policy CP8 of the CP I have imposed conditions regarding water and energy efficiency. To safeguard the amenities of the future occupiers of the development and to ensure the scheme complies with saved policies SU9 and SU10 of the LP I have also included a condition requiring a written scheme regarding ventilation.
30. The Council have suggested a condition removing permitted development rights. However, the interpretations within the Town and Country Planning (General Permitted Development) (England) Order 2015, state that, except in Part 3 of Schedule 2 (changes of use), for the purposes of the Order, a dwellinghouse does not include a building containing one or more flats or a flat contained within such a building. As such, the dwellings hereby approved would not benefit from the permitted development rights set out within Schedule 2, Part 1 of the Order and the suggested condition is not required.
31. I have little substantive information in respect of the Council's suggested condition requiring the submission of a scheme removing the future occupiers' entitlement to a parking permit. The Council refer to the need to allow the Traffic Regulation Order to be amended in a timely manner to ensure the development does not result in overspill parking and to comply with saved LP policies TR7 and QD27, policy CP9 of the CP and Supplementary Planning Document 14: Parking Standards, October 2016. However, though I have noted the comments within the Officer's report regarding permit uptake in the relevant controlled parking zone, I do not have enough information to evidence the harm which would be caused should this condition not be imposed. Furthermore, guidance suggests that preventative controls on parking permits should normally be secured via an appropriate planning obligation and the Planning Practice Guidance (PPG) advises that a negatively worded condition requiring an obligation may be appropriate only in exceptional circumstances. In my view, based on the evidence before me, I am not persuaded that such circumstances exist in this case and I have, consequently, not imposed the suggested condition.
32. The Council also suggested a condition requiring the developer to make pedestrian improvements in the vicinity of the appeal site. However, I have been provided with little evidence to substantiate the need for such a condition and, in my view, this condition would fail to meet the test of necessity. Accordingly, I have also omitted this suggested condition.

Conclusion

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

L J O'Brien

INSPECTOR

Schedule of 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: YO29-0001 Rev A, YO289-0005 Site Plan Rev B, YO289-120 Ground and first floor plans Rev C, YO289-121 Second and third floor plans Rev C, YO289-2000 North elevation Rev B, YO289-2001 East elevation Rev B, YO289-3000 Section DD Rev B, YO289-3000 Section CC Rev B.
- 3) No construction above ground floor slab level shall take place until details of the proposed windows and doors and samples of the materials and finishes to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) All new and replacement rainwater goods, soil and other waste pipes shall be in cast iron and shall be painted black and retained as such thereafter.
- 5) All new render finishes shall be smooth, lime based, wet render without external beads, stops, bell drips or expansion joints. The render finishes shall be retained as such thereafter.
- 6) The building hereby permitted shall not be occupied until the dormer windows in the rear elevations have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the windows shall be retained as such thereafter.
- 7) Access to the flat roof over the extensions hereby permitted shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity space.
- 8) The development hereby permitted shall not be occupied until details of the refuse and recycling storage facilities have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 9) None of the residential units hereby permitted shall be occupied until each residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
- 10) None of the residential units hereby permitted shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 11) No construction above ground floor slab level shall take place until a written scheme which demonstrates how and where ventilation will be provided to each flat including specifics of which windows shall remain hermetically sealed, where the clean air is drawn from and that sufficient acoustic protection is built into the system to protect end users of the development has been submitted to and approved in writing by the Local

Planning Authority. The approved scheme shall ensure compliance with Building Regulations as well as suitable protection in terms of air quality and shall be implemented prior to occupation and thereafter retained.