
Appeal Decision

Site visit made on 25 January 2021

by Robin Buchanan BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/Q1445/W/20/3255447
18 Church Road, Hove BN3 2FL

- 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 Mehmet Veysi Akyuz against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/03564, dated 1 December 2019, was refused by notice dated 30 March 2020.
 - The development proposed is described as the erection of a retractable glazed structure.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the appeal proposal on the character and appearance of The Avenues Conservation Area and on the setting of adjacent listed buildings, and whether any harm caused is outweighed by the public benefits of the proposal.

Reasons

3. The appeal site is a modern single storey shop (a convenience store) at the end of a taller terrace of older buildings in Church Road, on one corner of a cross road junction that includes Second Avenue. It is a mixed residential, retail and commercial area. Along the side of the shop, behind the pavement and (in part) a low wall is an open forecourt facing Second Avenue. Within the forecourt is a reasonably narrow, low level timber stall for the display and sale of fresh produce, such as fruit and vegetables. A retractable canvas canopy above extends over the forecourt display area.
4. The appeal proposal would result in the erection of a grey aluminium frame sited over part of the forecourt and attached to the side of the shop. It would support full height sliding ('retractable') glazed panels on three sides. This structure would be a permanent extension to the shop. It would be set back from Church Road and centrally placed in the side elevation, running along most of the length of the shop and the entire width (about 3m) of the forecourt to the back edge of the pavement. It would have a vertical height of about 3m to eaves level with a low pitched lean-to style roof above and would replace the existing retractable canvas canopy.

5. The appeal site is in The Avenues Conservation Area (the CA), which is a designated heritage asset. The Council's character statement¹ explains that in the CA there is a variety of architectural styles and that 'canopies feature strongly', 'boundaries are marked by low walls' and that mews buildings are 'an integral and important part of the areas character'. This is consistent with what I observed at my site visit in the vicinity of the appeal site. I also note that the Council's character statement refers to a 'homogenous character' to the area and 'recurring architectural features and materials that need to be protected'. These elements therefore make an important positive contribution to the overall character and appearance of the CA and its significance.
6. Next to the appeal site, in Second Avenue separated by a narrow service yard, are grade II listed mews buildings in Queens Place and these are a designated heritage asset. The nearest end building in Queens Place (the LB) faces Second Avenue and forms part of the road frontage and streetscene whereas the rest of the mews faces in a different direction. The LB has a narrow open front facing forecourt surrounded by a low boundary wall with timber framed glazed side panels and a retractable canvas canopy above. These features therefore make an important positive contribution to the special architectural or historic interest of the LB and its significance.
7. When considering the impact of proposed development on the significance of a designated heritage asset, the National Planning Policy Framework (the Framework) paragraph 193 indicates that great weight should be given to the asset's conservation.
8. The appellant has referred to a map extract² said to show the siting of built form on the appeal site in 1931. I note that it is somewhat diagrammatic. Nonetheless, even if, as the appellant suggests, a building previously did extend along Church Road across the full width of the appeal site to the corner edge of Second Avenue, there is no compelling evidence before me to suggest that it existed at the date the CA was designated in 1985 and then extended in 1989; moreover, it is not what exists today and would not therefore be a determining context for considering the appeal proposal.
9. The appellant suggests that 'most of the corner properties in the area have been extended to the side'. In the appellant's photographs, and as I saw at my site visit, the glazed parts of these other buildings are part of the main front elevation and do not project at all, or to any appreciable degree, beyond the main building line. I also saw that the other buildings on the corners of this cross-road junction have not been extended to the side. They therefore have reasonably uniform building lines on the approach to the junction and this symmetry is noticeable in public views.
10. While the low front forecourt wall of the LB runs along the back edge of the pavement, as would the appeal proposal, it does not form the building line — this is established by the LB itself and other buildings along this road, including the shop. The main side elevation of the shop is set back in relation to the general prevailing main building line of the other buildings along the appeal site side of Second Avenue, including the LB. It is only a slight inset and is not therefore obviously at variance with this building line.

¹ 'The Avenue Conservation Area Character Statement' supplementary planning guidance, February 1997.

² Source - myhistoricmap

11. However, the depth of the proposed structure would project a significant distance away from the side of the shop, including appreciably further than the front elevation of the LB. As a result, it would manifestly not be 'in the same line with the buildings in Second Avenue', as the appellant otherwise suggests, but would be appreciably forward of this building line. Consequently, it would disrupt the homogeneity of this established building line, which otherwise extends for some distance along Second Avenue and this architectural feature is therefore locally distinctive.
12. I accept that were I minded to grant planning permission conditions could control the internal layout within the structure and its use, as well as advertising and signage, and if necessary could be enforced by the Council. The bespoke design of the structure would otherwise complement the contemporary appearance of the shop and in this regard add to the architectural variety that is evident in this part of the CA.
13. However, it would nonetheless be a relatively large structure and would take up a majority of the side elevation of the shop. In addition, the metal would be reasonably thick in profile, in particular the roof, including the depth of the front and especially side (end) facias. Furthermore, on occasions the extensive area of sheet glazing would be likely to reflect light or mirror surrounding objects and during hours of darkness would likely need to be internally or externally illuminated to permit its intended use.
14. Even with some panels open (and these would have to be closed for significant periods of time outside of opening hours) the structure would therefore have substantial intrinsic visual and physical presence. Accordingly, this would enclose the forecourt space horizontally and vertically (and in depth) to an unwarranted degree, especially the fixed roof above. This would as a result substantially erode openness on this corner and would be unduly conspicuous in public views in and around this junction, including on the approach to it along some surrounding roads. It would therefore significantly detract from the character and appearance of the area
15. I also saw that the low boundary wall of the LB and at other properties in Second Avenue, and elsewhere in the vicinity of this junction, make a positive contribution to the streetscene by allowing an appreciation of activity within these more open and informal semi-public spaces. Indeed, the existing forecourt and display area on the appeal site is in keeping with this. Whereas, and despite some opening panels, the appeal proposal would result in a more distinct and formal, private apportionment of the space in the forecourt fronting Second Avenue, especially when the shop was not open and the glazed panels were shut.
16. The glazed panels in the LB are positioned only at each side end of the forecourt seating area, on top of the low boundary walls, have substantially smaller glazed areas and are significantly lower in height than would be the appeal proposal. Consequently, these are not overly conspicuous or noticeable. Furthermore, these panels do not enclose all of the open space in front of the LB, nor does its retractable canvas canopy above. It is not therefore 'similar' to the appeal proposal and does not 'match' it, as the appellant otherwise suggests, so does not therefore provide a comparable precedent.

17. Traditional retractable canvas canopies, of the sort at the appeal site, arc backwards and forwards to be open or closed (to cover rather than enclose) and as a result have a distinctive, informal transient quality that makes a positive contribution to visual interest and activity in the streetscene. I saw that a number of other buildings at this cross-road junction and along some of the road frontages have such canopies, including the LB. While the height and angle of the top of the structure would broadly match the existing retractable canopy, it would nonetheless have a formal fixed roof and result in the loss of the retractable canopy and this architectural feature.
18. Due to the close proximity and juxtaposition of the appeal site to the LB, and the orientation and facing of the LB towards Second Avenue, the appeal site would be within the setting of the LB. The appeal proposal would enclose the forecourt on the appeal site with an almost fully glazed structure to ground level and replace a retractable canopy with a fixed roof. It would also project beyond the Second Avenue building line, which includes the LB. These elements of the development would be at odds with intrinsic attributes of the LB and would not therefore help to sustain or reinforce its cultural and heritage values. Moreover, the siting and prominence of the development and its elevation in the higher part of Second Avenue, towards the junction with Church Road, would unduly intrude into this part of the setting of the LB and unacceptably erode the appreciation of the LB in the streetscene and in public views.
19. Considering the above, the appeal proposal would be an incongruous adjunct to the shop and would jar in the streetscene. It would therefore have a negative effect on the character and appearance of the CA and on the special architectural or historic interest of the LB by virtue of its effect on its setting. There would as a result be harm to, and loss of, the significance of these designated heritage assets and the appeal proposal would not therefore preserve the setting of the listed building and would not preserve the character and appearance of this part of the CA, and accordingly of the CA overall.
20. As this would affect only the part of the CA in the vicinity of the appeal site and this road junction, and would affect only part of the setting of the LB, the appeal proposal would cause less than substantial harm to the significance of the CA and the LB. In which case, Framework paragraph 196 indicates that this harm should be weighed against any public benefits of the proposal.
21. The appeal proposal would result in a more robust covered display area that was less susceptible (than the canvas canopy) to damage by inclement weather, would better protect fresh produce and be a safer and more conducive environment for customers (which may have some particular resonance in the current Covid-19 pandemic). It would consequently improve the viability of the business and help to reinforce the vitality and viability of retailing in this local area to the benefit of the local community. These would be significant public benefits.
22. Framework paragraph 194 indicates that any harm to, or loss of, the significance of a designated heritage asset, including from development in its setting, should require clear and convincing justification. While I attach moderate weight to the public benefits in this appeal, these would nonetheless not be sufficient to outweigh the identified less than substantial harm to the CA and to the setting of the LB.

23. Consequently, the appeal proposal would not accord with saved Policies QD14, HE3 and HE6 of the Brighton & Hove Local Plan, 2005 'policies retained, March 2016' and Policies CP12 and CP15 of the Brighton & Hove City Plan Part One, March 2016. These policies include that extensions and alterations in a conservation area should be well-designed, sited and detailed in relation to adjoining properties and to the surrounding area, including the layout of streets, building lines and building forms, and that development should not have an adverse impact on the setting of a listed building with regard to siting, height, layout and design. Development should also conserve or enhance the City's built heritage and its settings and reflect local distinctiveness.
24. It would also conflict with Framework paragraphs 8(c), 124, 127 and 184. These include that development should protect and enhance the built and historic environment, conserve heritage assets in a manner appropriate to their significance, create high quality places, add to the overall quality of the area, be visually attractive as a result of good layout, be sympathetic to local character and history, including the surrounding built environment and maintain a strong sense of place.

Other Matters

25. I acknowledge that the appellant has experienced unauthorised use of the open forecourt for parking or as a sleeping place for homeless people, who may also be drug users, and that the appellant considers this results in a hazard to the public. However, these are either a private property matter for the appellant or for enforcement by the Council, the Police or the relevant public agency or authority. I also appreciate that the appeal proposal would cause no harm to the living conditions of occupiers of existing property having regard to daylight, sunlight, outlook and privacy. However, the absence of harm in these regards is a neutral factor in my decision.
26. I also recognise that the appellant has sought to work constructively with the Council's officers through pre-application discussions and revisions to previously proposed development, but this has not resolved the Council's outstanding concerns as reflected in the decision that it ultimately made. The appellant has offered to consider further amendments if necessary. However, there is no amended proposal before me in this appeal and, in any event, I have considered the appeal proposal on its individual planning merits.

Planning Balance and Conclusion

27. As explained in the main issue above, the appeal proposal would cause harm to the significance of the designated heritage assets and I give substantial weight to this harm. The appeal proposal would broadly allow the appellant to operate the business in a more satisfactory way and I give moderate weight to these benefits.
28. Consequently, the appeal proposal would not accord with the development plan overall. There are no material considerations that indicate that my decision should be taken otherwise in accordance with the development plan. For the reasons given, the appeal does not succeed.

Robin Buchanan

INSPECTOR