
Appeal Decision

Site visit made on 26 July 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2021

Appeal Ref: APP/Q1445/C/21/3266524
15 Charlotte Street, Brighton BN2 1AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Michael Robert Ince against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice was issued on 8 December 2020.
- The breach of planning control as alleged in the notice is the unauthorised roof extensions creating a new storey and creation of a balcony to the rear & side of the property accessed by a new door in the rear elevation.
- The requirements of the notice are:
 - Remove the extra storey added to the top of the building;
 - Re-instate the pitched roof to its previous design and dimensions, using similar materials to match the previous roof in place before the unauthorised works took place;
 - Remove the unauthorised balcony area to the rear/side of the property;
 - Remove the new door installed to the back of the property which gives access to the unauthorised balcony and re-instate the wall.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is:

1) corrected by:

- deleting the word 'balcony' under section 3 (the matters which appear to constitute the breach of planning control) and replacing it with 'terrace';
- deleting the words 'rear elevation' under section 3 (the matters which appear to constitute the breach of planning control) and replacing them with 'side elevation'; and
- deleting the existing first requirement/bullet point, under section 5 (what you are required to do) and replace it with: "Remove the unauthorised roof extensions creating a new storey".

- 2) varied by deleting the existing third and fourth bullet point/requirement, under section 5 (what you are required to do), and replacing them with the following:
 - Remove the new door inserted in the side wall of the property at upper ground floor level and all other works carried out to facilitate the use of the flat roof of the lower ground floor extension as a roof terrace and restore the side wall at upper ground floor level to its original appearance prior to the breach of planning control.
2. Subject to these corrections and variations, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The allegation in the Enforcement Notice, which refers to a rear balcony is actually a terrace since it is formed above the roof of an existing extension at lower ground floor level. Furthermore, the allegation states that the new door facilitating access to the terrace is in the rear elevation of the property whereas it is actually in the side elevation of the property. However, the appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the allegation of the notice. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.
4. The requirements of the notice, under section 5 (What you are required to do) is poorly worded, in so far as these should precisely match the allegation. The first allegation refers to the "unauthorised roof extensions creating a new storey", whereas the first requirement states "Remove the extra storey added to the top of the building". It should therefore state "Remove the unauthorised roof extensions creating a new storey". My understanding of the notice is not affected by this minor error, and nothing within the appellants' submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
5. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and I have taken account of any responses from them in my determination of the appeal. The changes to the Framework do not materially alter the policies within the Framework most relevant to this appeal.

Ground (a) appeal and the Deemed Planning Application

Main Issues

6. The main issues are:
 - 1) the effect of the additional floor on the character and appearance of the host building and the heritage assets, including the setting of the nearby listed buildings and the character and appearance of the East Cliff Conservation Area (CA); and

- 2) the effect of the roof terrace on the living conditions for the guests of No 16 Charlotte Street in terms of noise and disturbance and privacy.

Reasons

Character and appearance, including heritage assets

7. The appeal property comprises an historic four storey over basement mid terraced building in use as flats, located within the East Cliff Conservation Area (CA).
8. With regards to the effect on designated heritage assets, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
9. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 200 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. The Framework defines the setting of a heritage asset in terms of the surroundings in which it is experienced.
10. The significance of the CA largely derives from its architectural and historic interest, associated with the growth of Brighton as a Regency and Victorian seaside town. With land rising from south to north, topography is an important factor affecting buildings in the area, with the gradual stepping up of front parapets at roof level in the street. The architectural style is predominantly Regency, comprising painted smooth stucco render with bay windows containing traditional sash windows. At roof level front parapets conceal shallow pitched roof behind with prominent chimney stacks visible above the roof at street level. During my site visit I observed that the appeal property and the terrace, share many of these characteristics and makes a positive contribution to the significance of the CA.
11. Adjacent to the appeal property are the Grade II listed buildings at 16-24 Charlotte Street, and opposite 7 Charlotte Street is also Grade II listed. The significance of these nearby buildings in heritage terms mainly stems from their architectural and historic interest.
12. For Nos 16 and 17 the listing description explains that these are early C19, 4 storeys over basement mid terraced properties, with paired flat-arched entries with overlights, both framed by Tuscan pilasters and entablature. Each elevation is treated as full-height and nearly full width segmental bay, with each floor containing 3 windows (with the central window at second and third floor levels blocked). All windows are flat arched, with sashes of original design at second and third floor level. The buildings comprise banded, chamfered

- rustication to the ground floor, storey bands between the first and second, and second and third floors, with entablature and blocking course above. The buildings also feature first floor balconies with cast-iron brackets and railings and chimney stacks to the party walls.
13. Nos 18-24 are early C19 4 storeys over basement mid terraced properties with painted stucco render with a full-height segmental bay with tripartite windows. All windows are flat arched, with sashes of original design in Nos 23 and 24. Each property has a rounded arched entry with fanlight above, accessed via a short flight of steps. All properties include rusticated ground floors, and first-floor balconies with cast-iron railings, and chimney stacks to the party walls. The roofs are concealed behind the blocking course.
 14. No 7 is an early C19 mid terraced 3 storeys and attic over basement property with painted stucco render, with a full-height segmental bay with tripartite windows; all windows are flat arched. Accessed via a short flight of stairs the property has a flat-arched entry with overlight, framed by Tuscan pilasters and entablature. The property also includes a balcony with cast-iron railings at first floor level a storey band between first and second floors interrupted by the bay, and chimney stacks to party wall. Again, the roof is obscured by the front parapet.
 15. A common theme throughout the street, are the front parapets which conceal shallow pitched roofs behind. During my site visit, I observed that the street is largely unimpaired by additional floors. The current unauthorised development which extends above the front parapet, introduces an overly dominant and visually discordant feature. In particular the additional floor is visible from a number of public vantage points along Charlotte Street and St James's Street, and results in a ridge height which is noticeably higher than the neighbouring properties, including the listed buildings at Nos 16 and 17. Therefore, the additional floor is intrusive and harms the character and appearance of the host building, detracts from the qualities of the CA, and also harms the setting of the Grade II listed buildings at Nos 16 and 17.
 16. I have considered the effect of the development on the settings of other nearby Grade II listed buildings at Nos 18-24 Charlotte Street and No 7 Charlotte Street. However, in light of the separation distances from these properties, I find no harm in these respects.
 17. In the terms of the Framework and paragraph 202, the harm that the development causes to the significance of the designated heritage asset, that is the CA and Nos 16 and 17, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development. However, no public benefits have been identified to offset the identified harms to the character and appearance of the CA and setting of the nearby listed buildings, to which I must attach considerable importance and weight.
 18. Concluding on the first main issue, the additional floor results in harm to the character and appearance of the host building and does not preserve the settings of the Grade II listed buildings at Nos 16 and 17 Charlotte Street. The development also fails to preserve or enhance the character or appearance of the CA as a whole. The development also results in harm to the significance of these listed buildings and the CA. Therefore, the development is contrary to policies QD14 and HE6 of the Brighton and Hove Local Plan, 2005 (LP) and

CP15 of the Brighton and Hove City Plan Part One, 2016 (City Plan). Amongst other things these state that proposals within conservation areas shall show no harmful impact on the townscape and roofscape of the conservation area, and the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets and their settings.

19. The development also conflicts with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment. Finally, it does not preserve the setting of the nearby listed buildings as required by Section 66(1) of the Act or preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. Instead, the development is harmful to these designated heritage assets. This carries considerable weight and importance to my decision.

The living conditions for the guests of No 16 Charlotte Street - noise and disturbance and privacy

20. Brighton and Hove City Council Local Development Framework Supplementary Planning Document, 2013 (SPD) states that "balconies on terraced and semi-detached properties (including flats) will be generally considered unacceptable as they would likely result in significant overlooking and noise disturbance issues". The insertion of a door in the side elevation of the extension facilitates and intensifies the use of the flat roof of the lower ground floor extension as a terrace, which is in close proximity to windows and rooms at No 16 Charlotte Street which is in use as a hotel. Whilst not a residential property, guests of the hotel would nevertheless require acceptable living conditions and a good night's sleep during their stay.
21. However, I have no conclusive evidence before me indicating the layouts of the rooms at No 16. If some of the nearest affected windows serve bedrooms, guests of the hotel may be exposed to increased levels noise and disturbance, from people using the terrace area and conversing outside, particularly late at night when guests should reasonably expect peace and quiet. Noise and disturbance may be particularly noticeable during summer months when guests are more likely to have windows open for ventilation, and I have no evidence that guests of No 16 would be protected from such disturbance. I therefore conclude that there is an unacceptable risk that the development causes harm to the living conditions of the guests of No. 16.
22. With regards to overlooking and privacy, the position of the terrace in close proximity to windows at No 16 together with the lack of sufficient screening results in intrusive overlooking into the neighbouring windows at lower and upper ground floor level of No 16, and therefore results in loss of privacy for guests of the hotel.
23. I appreciate that there are other balconies and terraces on neighbouring properties. However, I do not know the full circumstances of these balconies and terraces and their existence does not justify the harms identified above.
24. I therefore conclude that the insertion of the new door facilitating and intensifying the use of the flat roof as a terrace fails to provide acceptable living conditions for guests of No 16, with regards to noise and disturbance and privacy. Accordingly, the terrace area accessed from the new door is contrary to policies QD14 and QD27 of the LP. Amongst other things, these require that

planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and / or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

Conclusion on Ground (a) and the Deemed Planning Application

25. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on ground (f)

26. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
27. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirements of the notice, which requires the unauthorised developments to be removed (both the additional floor and the roof terrace) and restore the property to its former condition.
28. The appellant states that the requirements for the roof terrace requiring the removal of door and its replacement with a wall is excessive since a window previously existed within the side wall prior to the door being installed. Whilst, neither party can provide proof of what was there prior to the breach, the appellant is best placed to know what existed prior to the breach, and contends that a window existed, and that this is beyond doubt given that the room would have required natural daylight.
29. The notice can do no more than to remedy the breach of planning control. As such, the requirement to replace the door and re-instate wall, without any window would appear to go beyond what is necessary to remedy the breach of planning control. I will therefore delete the third/fourth requirement/bullet point and insert a new requirement which requires the removal of the door and works which facilitate the use of the flat roof as a terrace and for the side wall to be restored to its original appearance prior to the breach. This would remedy the breach of planning control, in line with s173(4)(a) of the Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
30. As such, the appeal on ground (f) succeeds and I will vary the notice to remove the excessive requirements.

Conclusion

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR