



Appeal Decision

Site visit made on 16 January 2023

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th March 2023

Appeal Ref: APP/Q1445/D/22/3301047

Kempton House, 72 Carlton Hill, Brighton, BN2 0GW

- 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 T & L Land Developments against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/00717, dated 15 March 2022, was refused by notice dated 10 May 2022.
 - The development proposed is the upwards extension of existing building to create two residential units.
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Decision

1. The appeal is allowed and planning permission is granted for the upwards extension of existing building to create two residential units at Kempton House, 72 Carlton Hill, Brighton, BN2 0GW in accordance with the terms of the application ref BH2022/00717, dated 15 March 2022, subject to the conditions set out in the attached schedule.

Main issue

2. The main issue in this appeal is the effect of the proposed development on the character and appearance of the Carlton Hill Conservation Area and the setting of nearby listed buildings.

Reasons

3. Kempton House is a modern building set over four and five storeys, with commercial use at lower ground and ground floor, and 9 flats across the upper floors. It lies within the Carlton Hill Conservation Area, where I have a duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Area. The Conservation Area is a tightly defined part of Brighton that represents a distinct historic area which has evolved over time, with small-scale buildings, larger ecclesiastical buildings, open space and distinctive boundary walls, all of which are set on a hilly topography with long views along roads. The significance of the Area as a heritage asset derives from it being evidence of the evolution of this part of the town on steep roads, whose pattern survives, with flint boundary walls, open space and the distinctive historic buildings.
 4. The appeal site adjoins the Grade II listed 34/35 Mighell Street to the south, which is a two storey former farmhouse that dates from the early 19th Century.
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To the north, on the opposite side of Carlton Hill, are 1-5 Tilbury Place, which are Grade II listed terraced town houses from c1815, and the Grade II Church of St John the Evangelist (now the Greek Orthodox Church) dating from 1838-40. Under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have a duty to have special regard to the desirability of preserving the setting of a listed building.

5. Kempton House has a stepped down roof height that relates to the steep terrain in the area. The proposed extension would be an additional storey on part of the building, and so the stepped-down design approach remains. The detailed design sees a set-back from the elevations of the building, with the use of cladding rather than the existing brick elevations, and this would assist in showing a subservient addition to the building. Kempton House is currently higher than the eaves of the adjoining former Vicarage to the east and lower than that property's ridge height, and the additional set-back storey would remain lower than that ridge. The extended building would be notably lower than the large American Express building to the west.
6. I paid careful attention at my site visit to all views towards the appeal site from the surrounding area and, whilst there would be a larger step-up in the building than currently exists, the increased massing of the building would not be imposing upon the area. The extended building would remain proportionate in scale to the adjoining former Vicarage due to the set-back of the extension and the limiting of the additional height. The stepped design approach would remain which relates well to the topography of the streets, and the design and scale of the extension would not impose upon the smaller scale buildings or open areas nearby.
7. The property is close to the American Express building and the recent Edward Street Quarter development. I acknowledge these are outside the Conservation Area but they still form part of the townscape in which Kempton House is seen. In longer views along the road Kempton House is seen in a context of the substantial buildings and notable changes in landform, and this setting means the extended building would remain not dominant to the street scene nor upset any visual balance with other buildings or the sloping topography of this part of Brighton. The step-back and use of materials would further successfully reduce the impression of increased massing at higher levels when seen from longer views.
8. The extension to Kempton House would not disrupt the ability to appreciate the historic evolution of the Conservation Area, nor impose upon either the small-scale or larger buildings in the area. The character of open space and the walls would be unaffected by the additional storey. Thus, the character and appearance of the Conservation Area would be preserved and there would not be any harm to the significance of the heritage asset.
9. The distance from Kempton House to the listed buildings to the north means that, at present, the building has little impact upon their setting: the building line, scale and height are sufficient to ensure the building forms an unassuming element in the street scene that does not impose on those buildings or the boundary wall. For the reasons given earlier, the proposed additional storey would retain that well-balanced scale, massing, height and design and hence Kempton House would remain appropriate to the street scene. Thus, for similar reasons, there would be no change in the setting of the listed buildings to the north.

10. The former farmhouse building of 34/35 Mighell Street to the south is a smaller scale building whose setting is at present largely dictated by the large American Express building, the Edward Street Quarter development and the existing Kempton House. The additional storey to Kempton House would not materially affect the setting of 34/35 Mighell Street due to the set-back of the extension and design: the setting would remain primarily the larger and taller other buildings, and the pre-existing main element of the Kempton House building.
11. The setting of the nearby listed buildings would therefore be preserved, and hence no harm to their significance at heritage assets.
12. On the main issue it is concluded that the proposed extension would be of appropriate design and scale to the existing property, and the extended building would sit comfortably within the wider area. There would be no harm to the character and appearance of the area of the setting of listed buildings. Thus, the appeal satisfies the requirements of Policies DA5, CP12 and CP15 of the Brighton & Hove City Plan Part One, and Policies DM21, DM26 and DM29 of the Brighton & Hove City Plan Part Two the overall aim of which is to seek to ensure all new development is well designed, scaled, sited and detailed in relation to the property to be extended and to the surrounding area; that the city's historic environment is conserved and enhanced; and that development within the setting of a heritage asset will not harm the contribution that setting makes to the asset's significance.

Other considerations

13. The positioning of windows for the proposed flats would not lead to any material change in levels of privacy to existing residents due to the existence of other windows to flats in the area, which look in similar directions. The scale and position of the extension would be at a height, and set-back, sufficient to ensure no adverse effect upon the outlook of nearby buildings or effect on levels of light.
14. The area sees a mix of uses at present, including residential use, and I do not consider the proposed additional flats would lead to any material change in noise or disturbance to residents. I acknowledge there is likely to be some disruption during construction. The Council have suggested a condition to minimise disturbance and, together with other legislation concerning the impact of construction work, this would be sufficient to address the matter.
15. The site is well-located in the town for means of travel other than private car and I am informed there is controlled parking in the area. Cycle parking is to be provided, with the Council suggesting a condition to secure details on this matter and the long-term retention. I am satisfied that, given the location of the site, there would not be any adverse effect on highway safety or pressure for parking in the vicinity.
16. The new flats meet the Nationally Described Space Standards and show a good layout to provide well-lit rooms with open outlook. I am therefore satisfied a good standard of accommodation would be provided.

Conclusion

17. I am informed the Council is unable to demonstrate a five year supply of deliverable housing sites. In accordance with Footnote 8 of the Framework, this

means that the policies which are most important for determining the proposals are out of date. Paragraph 11d) of the Framework states that in such circumstances planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

18. For the reasons given, I have not found any harm arising from the proposed development. Thus, the proposal benefits from the presumption in favour of sustainable development, and this is a material consideration of significant weight in support of the scheme.
19. My overall conclusion is that the proposed development does not conflict with the development plan as a whole, and the appeal is allowed. The presumption in favour of sustainable development adds further weight to this finding.

Conditions

20. The Council have suggested a number of conditions in the event of the appeal being allowed, and the appellant raises no objection to these. I have attached conditions requiring the submission of details showing materials to be used, to ensure a satisfactory appearance to the development, and a condition restricting further alterations for a similar reason.
21. Details of the cycle parking facilities are to be submitted, to ensure proper provision in the interests of sufficient parking for the property. A condition requiring submission and implementation of construction management has been attached to protect amenity, ensure highway safety and manage waste in accordance with the objectives of the development plan.
22. A condition has been imposed relating to nature conservation enhancements, to accord with the objectives of the development plan. I have also attached a suggested condition specifying the relevant drawings as this provides certainty.

C J Leigh

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 3) No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
- 4) Three or more swift bricks/boxes shall be incorporated within the external surface of the development hereby approved and shall be retained thereafter.
- 5) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
 - a) The phases of the Proposed Development including the forecasted completion date(s);
 - b) A scheme of how the contractors will liaise with local residents to ensure that residents are kept aware of site progress and how any complaints will be dealt with reviewed and recorded (including details of any considerate constructor or similar scheme);
 - c) A scheme of how the contractors will minimise disturbance to neighbours regarding issues such as noise and dust management, vibration, site traffic, and deliveries to and from the site;
 - d) Details of hours of construction including all associated vehicular movements;
 - e) Details of the construction compound;
 - f) A plan showing construction traffic routes.The construction shall be carried out in accordance with the approved CEMP.
- 6) Notwithstanding the proposal hereby permitted, prior to the first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
- 7) The development hereby permitted shall be carried out in accordance with the following approved plans: TA1392/01A, TA1392/10A, TA1392/11A, TA1392/12A, TA1392/13A, TA1392/14A, TA1392/15A, TA1392/16A, TA1392/17A, TA1392/18A