



Appeal Decision

Site visit made on 21 June 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal Ref: APP/Q1445/W/22/3311033

110A St. James' Street, Brighton, BN2 1TH

- 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 Ereira Mendoza & Co against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/01530, dated 6 May 2022, was refused by notice dated 28 July 2022.
 - The development proposed is reinstatement of residential use to basement incl. alterations to form studio accommodation with access off common way.
-

Decision

1. The appeal is allowed, and planning permission is granted for reinstatement of residential use to basement incl. alterations to form studio accommodation with access off common way at 110A St. James' Street, Brighton, BN2 1TH in accordance with the terms of the application, Ref BH2022/01530, dated 30 May 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appeal property is a grade II listed building. The Council has already granted listed building consent for the work.
3. After the Council made its decision it adopted the City Plan Part Two (CPPT). Accordingly, the CPPT attracts full weight in the decision making process. The main parties are aware of this matter and have had opportunity to provide any comments regarding this in the context of the appeal.

Main Issue

4. Whether the proposed development would provide acceptable living conditions for future occupants, with regard to outlook and daylight.

Reasons

5. The proposal would see the existing basement level of the building converted into a self contained studio flat. The north elevation would be altered by inserting a narrow strip of glazing behind a metal grill within the stall riser, to provide natural light to this end of the basement. This glazing would provide daylight to the bathroom and the northern end of the living area.
6. The other end of the room faces south. An existing opening would be extended down to floor level and fitted with a pair of glazed doors. Additional windows would be fitted to either side to serve the area behind the stairs and a small storage cupboard. The doors would open out onto a small courtyard. This area would be altered by removing an overhead escape platform and lowering the

height of the opposite wall. From the details set out on the proposed plans, my observations on site and the evidence included in the daylight assessment¹ it would appear that a satisfactory level of daylight would be achieved within the southern part of the unit.

7. However, the main living area is deep, and the proposed method of getting daylight into the north end of the flat would provide only a basic level of light, owing to its size, position, and orientation. This would mean that the living environment at this end would feel gloomier than the other end of the room. This would be likely to worsen over time given the likelihood that the glass behind the grill would quickly collect dirt owing to its pavement level position.
8. This would be exacerbated by the significant lack of meaningful outlook from the proposed dwelling. Outlook from the glazed doors would be over a courtyard area with a very shallow depth and towards a high wall. The section shows that it would be possible to look over the wall, but such a view would be primarily skyward, and heavily constrained by the buildings at the rear. Unlike other cases referred to in the submissions, the poor level of outlook would relate to the whole unit rather than one or two rooms. Future occupants might feel hemmed in and disconnected from the external environment in a manner that could have a harmful impact on their wellbeing and mental health.
9. The living area could be used differently than the way it is arranged on the proposed plans by, for example, moving the kitchen to the back of the room. This would have no bearing however on the poor outlook.
10. In its appeal submission the Council also referred to the potential for additional sound proofing at ceiling level to lower the ceiling height and further reduce the quality of the space. The sound proofing would be necessary to protect future occupants from noise from the business above. From my observations on site and a review of the details relating to such on the submitted drawings, the proposed ceiling make up and floor treatment would still leave an acceptable floor to ceiling height taking into account the modest scale and status of a basement in a building such as this. It would not be so restrictive that it would add to the issues identified regarding the quality of the proposed residential unit, and it should not weigh against the proposal.
11. In summary, the proposal would fail to secure acceptable living conditions for future occupants. It would not accord with Policy DM20 of the CPPT, which seeks to ensure that development proposals would not cause unacceptable loss of amenity to the proposed occupiers.

Planning Balance

12. For the reasons given the proposal would conflict with the development plan Policy that seeks to ensure that acceptable living conditions are provided for new developments.
13. The Council is unable to demonstrate a five year supply of deliverable housing sites. The evidence before me suggests that its supply stands currently at 1.8 years, which demonstrates an acute undersupply. The tilted balance set out at paragraph 11 (d) of the National Planning Policy Framework (Framework) is therefore engaged. As a result, where the policies are out of date, which would be the case where a Council cannot demonstrate a five year supply of

¹ Internal Daylight Version 1 7th February 2022 XDA Consulting

- deliverable housing sites, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
14. The proposed unit would be well sized for a studio flat. It would benefit from a sizeable bathroom, good storage that would be separate from the courtyard, a separate area under the stairs that could be used as a workspace as well as a large living area that could be flexibly used.
 15. The proposal would deliver a new small dwelling, which would contribute to the supply of housing in the city and the Government's objective of significantly boosting the supply of homes. Furthermore, the building is located in a popular area with easy access to a wide range of facilities and services.
 16. It is close to high quality publicly accessible outdoor space that includes the beach and seafront as well as The Green at New Steine, Old Steine Gardens and Queens Park. Future occupants of the proposed dwelling would therefore benefit from a wide range of high quality public spaces that can be easily accessed from the dwelling that would benefit their wellbeing and mental health.
 17. Additionally, the proposal would provide a new use for the basement area of the listed building, which is currently without a meaningful use and is in a poor state of repair. The proposal would facilitate the repair of this part of the building and put it into a use that would secure its future conservation.
 18. In terms of the three overarching objectives of the planning system, as set out at paragraph 8 of the Framework, the proposal would satisfy the economic objective by providing a dwelling in a good location where future occupiers would support local services and facilities. As to the social objective, the proposal would provide a well laid out dwelling in a vibrant area with good access to a wide range of high-quality outdoor space. The re-purposing of an existing underutilised space would make effective use of land. Additionally, future occupants of the dwelling need not be reliant on a private car to meet their day to day needs. Thus, the environmental objective would also be satisfied.
 19. Paragraph 130 of the Framework states that decisions should ensure that developments create places with a high standard of amenity for future users. I accept that this is a stringent test that would not be satisfied if I consider the limited outlook and restricted daylight levels of the dwelling in isolation. However, the dwelling would be well laid out and well sized for a studio flat. It would have an area of private outdoor space, which although small would be south facing and would supplement the usable area of the flat. Additionally, the building is in close proximity to a wide range of high quality outdoor spaces. These are factors that weigh against its short comings in terms of outlook and daylight levels, and taken as a whole the proposal would deliver a dwelling that would secure a high standard of amenity for its future occupants.
 20. Taking these numerous positive matters together I can be satisfied that the conflict with the CPPT would not be sufficient to significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development applies, and the weight I give to the Framework outweighs the conflict with the Policies of the CPPT.

Other Matters

21. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) 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 which it possesses. Additionally, section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
22. In its officer report for the listed building consent the Council identified a low level of harm that would arise from the insertion of the metal grilles into the stall riser. This intervention would impact upon the appearance of the building's fine principal elevation; however, it would be modest as the grilles would be of a proportion that would sit comfortably below the shopfront glazing. I am satisfied that the level of harm to the special interest of the listed building is therefore low. The proposal would also have a very minor adverse impact on the character and appearance of the East Cliff Conservation Area (CA).
23. With reference to Paragraph 202 of the Framework, the harm to the special interest of the listed building and the character and appearance of the CA would be less than substantial. Paragraph 199 of the Framework establishes that great weight should be given to the conservation of a heritage asset. I am satisfied that the low level of harm to both heritage assets would be outweighed by the public benefits of the proposal that are discussed above.

Conditions

24. I have had regard to the planning conditions suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have imposed condition 2 to specify the approved plans, to give certainty.
25. I have imposed conditions 3 and 4 to ensure that the dwelling is properly equipped with facilities for bike storage and refuse and recycling facilities. The bike storage condition is necessary to ensure that future occupants of the dwelling are able to access a wide range of travel options as an alternative to the private car. Both conditions are necessary to ensure that the development accords with the development plan.
26. I have imposed condition 5 to ensure that the dwelling is energy efficient to accord with the development plan. I have added an additional part to the wording suggested by the Council, taking into account the potential constraints presented by the historic significance of the building, so that a case can be made if it is not technically feasible to achieve the specified rating. This accords with the wording of Policy DM44 of the CPPT.

Conclusion

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

A Tucker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: ADC893/LP, ADC893/06, ADC893/07 Rev BADC893/08, ADC893/09, and ADC893/10.
- 3) The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.
- 4) The development hereby approved shall not be occupied until refuse and recycling storage facilities have been installed within the site and made available for use. These facilities shall thereafter be retained for use at all times.
- 5) The development hereby approved shall not be occupied until it has achieved a minimum Energy Performance Certificate rating 'C' for conversions and changes of use of existing buildings to residential and non-residential use, unless details are submitted to and approved in writing by the Local Planning Authority to demonstrate that it is not technically feasible to achieve such a rating.