



Appeal Decision

Site visit made on 2 August 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal Ref: APP/Q1445/C/22/3311322

27 Kemp Street, Brighton BN1 4EF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Terence Morse against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 18 October 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the replacement of timber windows with aluminium windows.
- The requirements of the notice are to: Remove the aluminium windows from the front elevation of the property and replace with timber framed windows, with all profiles to match the previous timber windows (as shown on Appendix A).
- The period for compliance with the requirement is: 6 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. The appeals are dismissed, 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.

Preliminary Matters

2. Following receipt of the appeal form which did not request an appeal on ground (a), the appellant subsequently confirmed that they also wish to plead that ground. The appeal will therefore proceed on ground (a), the deemed planning application as well as ground (f) as originally pleaded.
3. Shortly after the notice was issued, the Council adopted the Brighton & Hove City Plan Part Two on 20 October 2023 (Part Two Plan). I went back to both main parties to seek their views about this and the Council confirm that policies that are referred to on the notice from the Brighton and Hove Local Plan 2005 should carry no weight in my decision.

The Appeal on Ground (a) and the deemed planning application

4. Under this ground of appeal, planning permission is sought for what is alleged on the notice.

Main issue

5. The main issue is the effect of the development on the character and appearance of the building and the North Laine Conservation Area (CA), a designated heritage asset. In considering this main issue, I have a duty under

the provisions of the Listed Buildings and Conservation Areas Act¹ to pay “special attention” to the “desirability of preserving or enhancing the character or appearance of that area”. It has also been held that in considering this duty, it is necessary to consider the effects upon the CA as a whole.

Reasons

6. Both sides of Kemp Street contain mainly long terraces of simple, tight-knit cottages. There is a distinct visual repetitive rhythm to these residential properties with the corner buildings at either end being commercial and of a different but complimentary appearance which book-ends the street. Some mid-terraced buildings, including a group within the terrace directly opposite the appeal site, have a distinctly different front elevation and larger scale.
7. Kemp Street is in the north-western part of the CA. The CA covers a broad area including much larger commercial premises such as those further towards North Road and Church Street. As a consequence, there is a broad range of building styles including some modern buildings as well as traditional buildings adapted for commercial activity which appears to have altered their ground-floor elevations in particular. I noticed as well that within Over Street nearby, the tight-knit terraces are taller with an additional storey compared with Kemp Street. However, there is a network or grid of smaller sized buildings, many with a scale and appearance which unifies them such as along, for example, Kemp Street, Foundry Street and Queens Gardens.
8. Overall therefore, there is not a complete unity in the appearance and design features of the buildings in the CA. There is also a range of window styles in the buildings that retain their otherwise simple character such as those along Kemp Street. I have very limited specific evidence about what the traditional windows would have originally been found in buildings along this street. The Council’s Supplementary Planning Document “Architectural Features” (SPD) explains that of general significance to the history of traditional buildings in Brighton, timber vertical sash windows would generally have been used. Depending upon the era, these would have been either small-pained Regency windows or larger pained windows from the Victorian era when glass technology enabled larger glass pains.
9. A number of windows in the street adhere to this advice. Some are sliding-sashes with multiple-pains and with simple timber joinery details and recessed behind the front walls with substantial reveals. There are however many examples of windows along the street which do not conform to these traditions. These include a number of UPVC examples with little finesse to the joinery details and some are timber with bulky casements. The Council formally removed ‘permitted development’ rights to undertake such changes without planning permission as notified in a letter supplied with the appeal documents, in 2005. The Council has therefore attempted to stem the flow of changes which individually and cumulatively have not preserved the historic character and appearance of the CA.
10. The windows that have been inserted within the ground and first floor at the front elevation of No 27 at the appeal site each have a modern design with a large lower-pain and a smaller top-light, each with hinged opening mechanisms. They have been installed with only a very insignificant reveal,

¹ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

close to the front face of the building and the mitred jointing is in contrast to more elegant joinery within timber sashes that I saw in the street. The aluminium surface is very clean, uniform and functional looking, It lacks the inherent informal, grainy surface appearance of timber as used elsewhere in the CA and which at least pays some respect to traditional materials even if the design of some of the windows is inferior to authentic traditional designs. The current windows do not conform with the advice within the Council's SPD.

11. A photograph of the previous windows that have been replaced, is provided within the notice. The appellant has also submitted a photograph of those windows. In section 5 of the notice, the requirement is to remove the existing windows and replace them with timber framed windows to match the previous ones. Those previous windows did not conform with the more traditional styles that can still be seen along Kemp Street and elsewhere in the CA. They appear to have included a top-hung opening section which was separated by glazing bars into 4 smaller sections. The bottom sections below transom-level, were also separated by glazing bars into 12 squares. The frames were not set back very much from the front wall, with only a small reveal. The Council's SPD does not encourage this type of window either. However, it is not disputed that they were constructed of wood and at least attempted to mimic to some extent the nearby examples of more traditional windows with glazing bars at least giving an appearance of individual panes.
12. Kemp Street has been affected by some unfortunate alterations on other buildings. That does not justify further deterioration of the significance of the CA. The previous windows would also not be examples to be used as best practice within the CA. However, the form and materials of the current windows are further removed from windows traditionally used in the CA in form and materials.
13. In relation to the main issue, the development has had a harmful effect on the character and appearance of the building and the CA which is a designated heritage asset. The windows have not preserved or enhanced the character or appearance of the CA and have not paid sufficient regard to architectural features that contribute positively or the use of building materials that respect the area. As such the development does not comply with Policy CP15 of the Brighton & Hove City Plan Part One or Policy DM26 of the Part Two Plan. The harm caused to the CA is less than substantial, It is therefore necessary to consider whether there are public benefits to outweigh the great weight that I need to give to the conservation of the designated heritage asset.

Other matters and overall balance

14. The appellant says that the current windows have resulted in a reduction in condensation, mould as well as energy usage and also help to prevent noise within the building. I have been provided with no specific evidence about the extent of these advantages or how it has been achieved. I do understand however that modern windows do have some advantages in those respects. There is no explanation or evidence about whether the windows required to be installed by the notice could include modern improvements to assist with, for example, ventilation, sound insulation and heat retention. There is no evidence either about why the insertion of the unauthorised windows was considered the best way of achieving those advantages or whether other ways of achieving them could have been undertaken whilst retaining the previous windows or

possibly replacing them with modern windows which adhere more closely to the traditions of the area. The advantages of the current windows are public benefits because they relate to the health and wellbeing of the occupants of the building and contribute to energy efficiency. However, given the evidence provided, they have limited weight.

15. The appellant draws attention to the expensive door that they have installed at the appeal dwelling. I have no detail about the specification of the door but property upkeep is a public benefit which I can give weight to, albeit very little weight in the context of these appeals.
16. These benefits are insufficient to outweigh the lack of compliance with the development plan as a whole and they are not public benefits sufficient to outweigh the great weight that the National Planning Policy Framework states, should be given to the conservation of designated heritage assets.
17. The appeal under ground (a) fails and the deemed planning application will be refused.

The Appeal on ground (f)

18. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The Council confirms in its appeal statement that the purpose of the notice is to remedy the breach of planning control.
19. The appellant has not provided any justification for why lesser steps would achieve the purpose of the notice. I can see no obvious alternative to replacing the existing windows with the previous windows or at least windows of the same form. As such, there do not appear to be any lesser steps that could achieve the purpose of the notice.
20. The appeal under ground (f) therefore fails.

Conclusion

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

Andy Harwood

INSPECTOR