
Appeal Decision

Site visit made on 23 January 2024

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/Q1445/F/22/3309018

119 Church Road, Hove BN3 2AF

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Elvis Kiri of Paris Wine Bar against a listed building enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 6 September 2022.
 - The contravention of listed building control alleged in the notice is the construction of a timber extension with retractable roof to the rear of the property.
 - The requirements of the notice are:
 1. Completely remove the timber extension and retractable roof from the rear of the property.
 2. Make good any damage to the historic boundary wall.
 - The period for compliance with the requirements is four (4) months.
 - The appeal is made on the grounds set out in section 39(1)(e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed and the listed building enforcement notice (LBEN) is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Procedural Matters

2. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 16(2) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). These require special regard to be given to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses and special attention should be given to the desirability of preserving or enhancing the character of appearance of conservation areas.
3. It is my understanding that at the time the Notice was served the Brighton & Hove City Plan Part Two (LP Part Two) had significant weight and was at an advanced stage of adoption. It was formally adopted on 20 October 2022 and therefore has full weight in the determination of this appeal.
4. Since the Enforcement Notice was issued, the Government has published a new National Planning Policy Framework (the Framework). In relation to the main issues in this appeal, Government policy has not materially changed. As such, the cases of either side have not been prejudiced.

The appeal on ground (e)

5. The ground of appeal is that listed building consent ought to be granted for the works and therefore the main issues are whether the works would preserve the Grade II listed building, 105-119 Church Road, and any of the features of special architectural or historic interest that it possesses and the extent to which it preserves or enhances the character or appearance of The Avenues Conservation Area and the setting of the Cliftonville and Willett Estate Conservation Areas.
6. Policy CP15 of the Brighton & Hove City Plan Part One (the LP Part One) states that the City's historic environment will be conserved and enhanced in accordance with its identified significance. Policy DM18 of the LP Part Two states that proposals for development will be expected to consider local context, including responding positively to the urban grain. Policy DM26 goes on to state that particular regard should be had to the urban grain and/or historic development pattern of the area, including plot sizes, topography, open space and landscape, and the typical building forms and building lines of the area, including scale, rhythm and proportion. Policy DM27 states that proposals involving the alteration or extension of a listed building will be permitted where they would not harm the special architectural or historic interest of the building, having regard to the exterior of the building, its design, construction, fabric, finishes and architectural features and boundary walls.
7. The appeal building was first listed in November 1992 as part of a terrace known as 105-119 Church Road. It is described as a terrace of dwellings and offices with shops at ground floor level. The terrace was constructed around 1870 of yellow stock brick with vermiculated quoins, stone or composition dressings with a mansard slate roof to taller end bays with a raised parapet. Otherwise, the roof is steeply pitched of slate with shaped brackets to the eaves cornice and truncated roughcast stacks. The terrace has an extra storey at either end forming mansard roofed towers.
8. The terrace has three storeys plus attic incorporated of 1:6:1 bays with sash windows with glazing bars except for the canted bays which have single vertical glazed bars. The end bays are set slightly forward of the main build line with three segmental-headed windows in moulded surrounds in the attic storey. There are four gabled dormers on the front elevation with two rebuilt flat roof dormers, second floor windows have moulded surrounds to paired round-arched windows. At first floor level the building incorporates tripartite sash windows to the first floor canted bays with canopies and a continuous iron balustrade. There are twentieth or twenty first century shopfronts at ground floor level between rusticated piers carrying shaped brackets rather than capitals and the end bay has a fluted pilaster with an ornate capital. The special interest of the building lies in its vernacular quality, architectural detailing and historic features and the materials used. Its traditional form with characteristic rear outrigger arrangement and rear yards is also important.
9. The site is situated within The Avenues Conservation Area and forms part of the boundary with the adjacent Cliftonville and Willett Estate Conservation Areas. Architecturally, The Avenues includes a variety of styles of building due to the changes of taste that took place during the slow pace of its development. Generally, the character and appearance of the area is of three and four storey terraced or semi-detached properties, mostly yellow brick with

slate roofs, but with groups of properties built of red brick and tile. Architectural details include some ornate brickwork, bays, balconies and canopies. Property boundaries are formed of by low walls, mostly with railings or stone balustrading. Most properties have solid panelled doors, timber sliding sash windows and large chimney stacks. The mews are an integral and important part of the area's character, as are the many traditional shopfronts along Church Road. Overall, the consistent character, the scale of the buildings and recurring architectural features and materials are the key characteristic features that demonstrate the area's significance.

10. The appeal site is also immediately adjacent to the Cliftonville Conservation Area and forms part of its setting. The significance of the Conservation Area is mainly residential, with some pockets of small scale workshop uses and Victorian shop frontages along the main routes through the area. The area illustrates the changing architectural styles of the period with classical stucco facades being common and semi-detached villas prevail. Earlier terraces are of the Regency period and the later streets have a more varied, less refined classical detail. There is a variety of roof styles and detailing in the area, but natural slate prevails. Pale cream and white facades reinforce the street harmony and tall decorative chimney stacks are distinctive features. Dwellings are set back from the street to a uniform building line, and front gardens are enclosed by walls and piers.
11. The adjacent Willett Estate Conservation Area is characterised by large bay fronted, detached, semi-detached and terraced houses, set in spacious tree lined streets, behind walls with railings. The predominant building materials are yellow/ cream gault brick and slate, but there are also a number of rendered buildings and a scattering of red brick. The brick elevations are relieved by a variety of details, and the extensive use of decorative and moulded bricks with a floral motif is a particular feature in the finest Willett houses. Some have impressive porches, and tiled entrance paths and tiled or stone steps are common.
12. The works the subject of the LBEN comprise the addition of an extension to cover the full width and length of the plot to the rear of the building, enclosing all the rear open space area. The structure has been attached to the boundary walls, extending above the level of the walls and finished in timber boarding with a gently curved and part retractable roof over which is constructed of flexible plasticised canvas. The top of the historic boundary walls appears to have received some kind of surface treatment. The appeal property is used as a wine bar and the development provides a covered seating area, when the roof is closed. When retracted there remains in place an open courtyard area.
13. The footprint of the extension does not follow or appear to have any regard to the traditional profile of development established by projecting part-width outriggers interspersed by basement wells alternately, along the rear of historic terraced property. This pattern is reflected in other terraces within the Conservation Area. As such it is considered to cause harm to the significance of the listed building and the means of attachment to the boundary walls has the potential to cause physical harm.
14. The rear elevation of this terrace is clearly visible from its surroundings, including from the public multi-storey car park to the rear and the rear extension also affects the appearance and character of the Conservation Area

when seen from the surrounding the public realm. This property has been the subject of several applications for rear extensions over the years, including proposals for large extensions incorporating most or all of the width of the rear garden/courtyard area. It is my understanding that the extension that has been implemented is the first to extend over the full length of the plot. Extensions that would project beyond the width of the existing outrigger have clearly been robustly resisted on this site in the past.

15. The extension fails to respect the traditional form of the listed terrace which is development typical of its period and along with other unsympathetic rear extensions to properties along the terrace which, I understand were built prior to listing, the development erodes the rear outrigger arrangement which is a characteristic feature that should not be lost. The extent of the effect of the extension which covers the entire rear yard area is particularly harmful to this established pattern of development.
16. The extension represents an unsympathetic addition to the listed building and wider terrace and there is little evidence that consideration has been given to the character of the original building, in terms of overall form, scale and materials. It is also not clear whether any measures were taken to protect or preserve the boundary walls before the extension was added onto them.
17. Consequently, given the extent of harm to the character and appearance of the listed building there is harm to The Avenues Conservation Area in terms of the harm to the established pattern of development and in particular the loss of the open space to the rear of the property. In addition, the materials used are unsympathetic and uncharacteristic of the sensitive historic surroundings and there is little evidence that the overall design and form of the extension has had regard to the special features of the Conservation Area, including styles of building, materials used and detailing. This harm extends to the setting of the adjacent Cliftonville Conservation Area which is situated immediately adjacent to the appeal site.
18. Although the wider terrace lies adjacent to the Willett Estate Conservation Area, as a consequence of the separation between the appeal development and the Conservation Boundary I do not conclude that the works have been harmful to its setting.
19. Given the above, I find that the works the subject of the LBEN fail to preserve the special interest of the listed building, the significance of The Avenues Conservation Area and the setting of the Cliftonville Conservation Area. Consequently, I give this harm considerable importance and weight. The Framework advises that when considering the impact on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets. In this case I find the harm to be less than substantial but nevertheless of considerable importance and weight.
20. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant has raised the point that the hospitality industry was significantly harmed by the pandemic and the rear extension has been the business's response in an effort to remain viable. I have taken this into consideration and, indeed, the improvement of existing businesses accords with Policies CP2 of the LP Part One. However, it is clear to me that the extension has not been designed to be

a temporary feature but is intended to be permanent. Restrictions associated with Covid 19 have been lifted and the need for the business to provide increased covered seating in a well-ventilated area is no longer a justification for the development in place. In any case, I do not consider that the benefits to the business outweigh the harm caused to the significance of the host building, wider listed terrace, or the conservation areas.

21. The appellant has drawn my attention to other extensions and alterations to the listed terrace and I agree that some of these are harmful to the character or appearance of the Grade II listed terrace and wider conservation area setting. However, on the evidence before me these seem to have taken place before the building was listed and therefore were not subject to the same heritage controls that are now in place. Furthermore, the harmful effects of other works or developments do not justify the impact upon the architectural and historic character and appearance of the listed building or the harm to The Avenues Conservation Area or the setting of the Cliftonville Conservation Area.
22. Given the above and in the absence of public benefit to outweigh the harm I have found, I conclude that the works fail to preserve the special historic interest of the Grade II listed building and features of historic or architectural significance it possesses and would fail to preserve or enhance the character or appearance of The Avenues Conservation Area and the setting of the Cliftonville Conservation Area. This would fail to satisfy the requirements of the Act, the Framework and conflict with Policy CP15 of the LP Part One and Policies DM18, DM26, DM27 and DM29 of the LP Part Two.
23. Therefore, the appeal on ground (e) does not succeed because it conflicts with the development plan as a whole.

Formal Decision

24. The appeal is dismissed and the LBEN is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

A A Phillips

INSPECTOR