



Appeal Decision

Site visit made on 31 January 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29.02.2024

Appeal Ref: APP/Q1445/D/23/3332259

38 North Gardens, Brighton BN1 3LB

- 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 Mr Jon Heffernan against the decision of Brighton & Hove City Council.
 - The application Ref: BH2023/01855, dated 29 June 2023, was refused by notice dated 5 September 2023.
 - The development proposed is for alterations to the existing single-storey rear extension to create a ground-floor level roof terrace with a new door for access.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to the existing single-storey rear extension to create a ground floor level roof terrace with a new door for access at 38 North Gardens, Brighton BH1 3LB in accordance with the terms of the application, Ref: BH2023/01855 dated 29 June 2023, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans (i) Block Plan, (ii) Site Location Plan and (iii) Proposed – Plans, Section and Elevation Ref: SK-002A.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as specified on the approved plans.
 - 4) Prior to the occupation of the development hereby permitted, the glass balustrade shown on approved plan SK-002A, shall be fitted with obscure glass or glazing film over the entirety of the glass, to a minimum level of obscurity equivalent to Pilkington Texture Glass Level 3, and shall be retained as such thereafter.

Main Issues

5. The main issues are the effect of the proposal on:
 - a) The character and appearance of the host property, and whether it would preserve or enhance the character or appearance of the West Hill Conservation Area; and
 - b) The living conditions of neighbouring properties with particular regard to loss of privacy and noise.

Reasons

Character and appearance

6. The appeal property is a terraced house located on the eastern side of North Gardens within the West Hill Conservation Area (CA). To the rear of the property is a single storey outrigger with sloped roof, which matches an almost identical structure on the adjacent property No 37. The rear of the properties along the terrace comprise a mixture of courtyard amenity areas and built form.
7. Section 71 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 205 of the National Planning Policy Framework (the Framework) confirms 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.
8. The CA comprises a residential area interspersed with commercial properties that have historically developed around Brighton Station. The significance of the CA arises from the historic development of the area and includes high quality architecture and relatively high density terraces of properties. In terms of the appeal site, the primary contribution of it to the significance to the CA is its frontage on North Gardens. The rear of the terrace does not have the same contribution to significance and is affected by the presence of various commercial buildings and extensions to which there is little uniformity.
9. Moreover, whilst the rear outrigger roof might be an original feature there is nothing in the information before me that confirms it of itself is a strong positive contributor to the significance of the CA. The outrigger roof has, therefore, a neutral contribution to the character and appearance of the CA. In this context, I do not find that there would be any harm to the special significance of the CA by its proposed removal.
10. The roof terrace that would replace it has been designed to retain the existing parapet wall along with a 1.1m high glass balustrade, grey decking and accessed by a new timber door. Utilising the existing parapet wall is a positive aspect of the scheme that would minimise the level of change proposed and screen the terrace that would sit below it from the limited number of viewpoints that exist. The use of a glazed balustrade and grey decking would be appropriate and unassuming materials to use in the context of its surrounds and would not be overly prominent if seen from any nearby properties. This is in contrast with less sensitive materials that have been used on other alterations made to the rear of other properties.
11. In conclusion, the proposed development would not harm the character or appearance of the existing building, the West Hill Conservation Area or the overall character of the area. Consequently, the proposal accords with Policies DM21 and DM22 of the Brighton & Hove City Local Plan Part 2 (2022) (CPP2), which requires development to be well designed and scaled, sited and detailed in relation to the property to be extended and surrounding area, and preserve or enhance the distinctive character and appearance of the CA.

Living Conditions

12. The proposal would create an elevated rear amenity space between 37 and 39 North Gardens. The terrace of properties is set within a tight urban grain where, at the rear, there is mutual overlooking and views from upper floor windows to amenity spaces and windows.
13. I acknowledge that the terrace could result in direct views into nearby windows. However, the adjacent most affected window at No 39 is obscured glazed, which would negate any impact when closed. The most affected window at No 37 is further away from the proposed terrace than the relationship with No 39. Moreover, this and other affected windows, including whether they are open or closed, are already not overly private due to the surrounding existing properties. The impact of the proposal on views to adjacent windows is, therefore, not likely to be materially harmful over and above the existing situation. I do consider, however, that as a further safeguard to neighbouring amenity the proposed glass balustrade should comprise obscure glazing as opposed to clear; I have included this requirement in the conditions section of this decision.
14. There would not be any overlooking impacts to No 37's rear amenity space due to the similar style outrigger and flat roof on that property that covers what would otherwise be a courtyard area. With regard to No 39, the proposal would utilise the existing parapet wall to provide separation to No 39. This wall would protect against overlooking to No 39 when people on the terrace are seated, but is not high enough to completely screen overlooking from someone standing up. However, the rear amenity spaces along the terrace are not private given the tight urban grain and mutual overlooking that already exists from neighbouring properties; this is particularly evident from the existing two storey roof terrace at No 40. Consequently, I conclude that there would not be a materially harmful loss of privacy to the rear amenity space to No 39 as it is already overlooked to an extent by other properties.
15. The area is a relatively high density residential area within the city centre, which would mean some associated noise and disturbance from use of rear amenity areas is to be expected. There is nothing in the information before me that identifies that this would be amplified by the appeal proposal and any noise and disturbance would be no greater than what could be generated by using the existing rear amenity space at the property.
16. For the foregoing reasons, I conclude that the proposed development would not cause unacceptable harm to the living conditions to neighbouring properties. Consequently, the appeal proposal accords with Policy DM20 of CPP2.

Conditions

17. I have considered which planning conditions are required having regard to the tests contained in the Planning Practice Guidance (PPG) and the conditions suggested by the Council. I have included the standard condition requiring implementation within three years of the date of this decision.
18. I have included a condition to require that the proposal must be built in accordance with the specified approved plans for the avoidance of doubt and in the interests of certainty. I have also included a condition requiring that the

materials should be as shown on the approved plans in the interests of precision.

19. I has also found that it is necessary for the glass balustrade to comprise obscure glazing to preserve neighbouring amenity. I have included a condition requiring this.

Conclusion

20. For the reasons given above, the proposal is consistent with the policies of the development plan as a whole and there are no material considerations that would lead me to a different conclusion. I conclude that the appeal should be allowed, subject to the conditions specified.

N Perrins

INSPECTOR