



Appeal Decision

Site visit made on 26 February 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2024

Appeal Ref: APP/Q1445/C/22/3298309

Land at 39 & 39A Grand Parade, Brighton BN2 9QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Farchy of Jonston Management Ltd against an enforcement notice issued by Brighton & Hove City Council.
- The enforcement notice was issued on 6 April 2022.
- The breach of planning control as alleged in the notice is: Without planning permission
 1. the material change of use of the building from retail to 4no self-contained flats;
 2. the operational development associated with the unauthorised change of use as follows:
 - I. Installation of French doors at first floor level on the front elevation of the building.
 - II. Installation of a balcony and erection of a canopy over French doors at first floor level on the front elevation of the building.
 - III. Installation of a pair of casement windows on the second floor on the front elevation of the building.
 - IV. Installation of a flush door with beading and associated works at ground floor level on the front elevation of the building.
 - V. Construction and raising the level of the existing parapet on the front elevation of the building.
 - VI. Installation of a roof light to the front elevation
 - VII. Construction of and raising the level of the existing parapet to the rear elevation of the property.
 - VIII. Raising the level of the roof and replacement of roof covering using imitation slate.
 - IX. Installation of French doors opening on to the balcony at first and second floor level on the rear elevation of the building.
 - X. Installation of roof lights to the single storey ground floor rear extension.
 - XI. Installation of plastic drainage and guttering goods.
 - XII. Construction of the second floor rear extension and the construction of additional floors of the building at third floor level, which includes a mezzanine floor in the roof.
- The requirements of the notice are:
 - (1) Cease the use of four (C3) flats.
 - (2) i. Remove the French doors at first floor level on the front elevation.
 - ii. Remove the balcony and canopy that have been erected over the first floor French doors on the front elevation.
 - iii. Remove the pair of casement windows that were installed at second floor level on the front elevation.
 - iv. Remove the front flush door with beading and reinstate the original door and window with single glazed aluminium frames on the ground floor front elevation, as shown in DOUGLAS.16.SV.02 dated 12/06/16 associated with planning application BH2016/06207 and associated photograph.
 - v. Reduce the level of the parapet on the front and rear elevations to the previous existing height.
 - vi. Remove the front roof light on the western/front elevation.

vii. Reduce the height level of the existing parapet to the rear elevation of the property, As shown in DOUGLAS.16.SV.02 dated 12/06/16 associated with planning application BH2016/06207.

viii. Reduce the height of the roof to the previously existing height and replace the roof covering with grey slate tiles similar to that previously installed. As shown in DOUGLAS.16.SV.02 dated 12/06/16 associated with planning application BH2016/06207 and associated photograph.

ix. Remove the French doors opening on to the balcony at first and second floor level on the rear elevation of the building. Revert the property back to the existing plans of DOUGLAS.16.SV.07 and DOUGLAS.16.SV.01 dated 12/06/16 associated with planning application BH2016/06207.

x. Remove the roof lights to the single storey ground floor rear extension.

xi. Remove all plastic drainage and guttering goods and replace with cast iron goods

xii. Remove:

(i) the second floor rear extension;

(ii) the additional floors inserted in the original building at third floor level; and

(iii) the mezzanine floor in the roof

and revert the building to as shown on the existing plans reference DOUGLAS.16.SV.07 and DOUGLAS.16.SV.01 dated 12/06/16 associated with planning application BH2016/06207.

- The period for compliance with the requirements is 3 and 18 months respectively.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction and variation.

Preliminary Matter

2. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. It however does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

The Enforcement Notice

3. Requirement 5. (1) of the notice requires the cessation of the use of the four flats. It is however more appropriate to require cessation of the use of the land as flats, to avoid any prospect of a different number of flats remaining at the site following the enforcement action. Injustice to the parties however does not arise from making this correction, as it does not make the notice any more onerous.

The ground (a) appeal

Main Issues

4. The main issues are:
 - whether the development preserves or enhances the character or appearance of the Valley Gardens Conservation Area (the CA); and,
 - whether the development provides adequate living conditions for occupiers having particular regard to the size and layout of the internal accommodation.

Reasons

5. The site relates to a building with a narrow frontage onto Grand Parade. It is situated within the CA. The development before me relates to the material change of use of the building to 4 flats as well as the associated building works.

Conservation Area

6. The site therefore lies within the CA. In determining this appeal, I have duties to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. As a designated heritage asset, the CA is irreplaceable, and so any harm or loss requires clear and convincing justification. The Framework advises that any harm which is less than substantial must be weighed against the public benefit of the proposal.
7. The site derives its significance from its location within the CA where the typical building form is the terrace. Rooflines are not uniform but are generally characterised by pitched or mansarded slate roofs, often behind parapets. The architecture generally shares a common Regency or early Victorian style, with elevations commonly rendered and with sash windows that graduate in size to reflect the primary importance of the ground and first-floors. Its status as a CA therefore lies in the historic interest behind its development as well as the architectural interest of its buildings.
8. In contrast, the development as constructed, which includes works to the façade of the building including raising the parapet wall, the arrangement, proportion and design of fenestration, and changes to the roof of the building, result in a conspicuous building within the terrace of buildings, which is thus at odds with the otherwise prevailing character and architectural interest of adjoining buildings. The size and style of fenestration is particularly discordant.
9. This accordingly fails to preserve or enhance the pattern of vernacular built development in the immediate area. Moreover, the development arising from its resultant appearance fails to be well designed, let alone raise the standard of architectural design in the city.
10. I conclude the development fails to preserve or enhance the character or appearance of the CA and therefore contravenes Policies CP12 and CP15 of the Brighton & Hove City Plan Part One, March 2016, Policies DM21 and DM26 of the City Plan Part Two, April 2020 (the CP2), and retained Policies HE6 and QD14 of the Brighton & Hove Local Plan (the LP). These policies, amongst other things, require development to raise the standard of architectural design, conserve the City's historic environment, be well designed and preserve or enhance distinctive character. For the same reasons the development contravenes the Brighton & Hove adopted architectural features supplementary planning document.
11. In the terms of the Framework, the development results in less than substantial harm to the designated heritage asset and it must therefore be weighed against any public benefit that would arise from it. I however have very limited evidence before me of any public benefit to outweigh the harm to the designated heritage asset.

Living Conditions

12. The appellant has provided limited evidence in respect of floor-plans or the size of the flats to demonstrate they comply with space standards¹.
13. In any event, I could then see during my site visit that the flats were cramped and provided inadequate space for the furniture and circulation space that would be reasonably required in a flat, even a very small flat. The kitchens also provided insufficient facilities and worktop spaces. The flats therefore do not provide an acceptable standard of accommodation.
14. I conclude the development is harmful in respect of the living conditions for occupiers and therefore contravenes retained Policy QD27 of the LP and Policies DM1 and DM20 of the CP2. These policies, amongst other things, require development to protect the amenities of occupiers and meet space standards.

Other Matters

15. The appellant highlights that planning permission was granted in 2017² for a three-bedroom dwelling at the site, with associated external alterations. The evidence before me is that this permission was not implemented and therefore has expired, and the further details that had been required by condition were not provided and/or approved.
16. The appellant asserts that this permission should still be considered acceptable, and that I should modify the notice and grant planning permission to match that previously approved. However, the deemed planning application relates to 4 flats and the associated building works, not a three-bedroom dwelling. This would therefore amount to a different scheme which thus goes beyond the scope of the deemed planning application before me. It is quite simply not a part of the matters that have been enforced against and so I am not in a position to modify the notice or grant planning permission pursuant to s177(1)(a) of the Act. It is therefore not an obvious alternative as the deemed planning application is not a departure from the planning permission, but a different scheme. The case law³ cited by the appellant therefore does not assist him. I consequently afford this supposed fallback/proposition neutral weight.
17. I note the development would provide additional units of accommodation that might otherwise add to the housing stock of the area. However, given the harms I have found, I afford this very limited weight.

Conclusion

18. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the ground (a) appeal should fail.

The ground (f) appeal

19. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an

¹ Technical housing standards – nationally described space standard, March 2015

² Council ref: BH2016/06207

³ *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566; *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101

appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

20. The appellant contends that the Council could have required modification to match the previously approved scheme. However, the appellant has acknowledged that the planning permission has expired. It is also not part of the matters enforced against and the operations or activities were not in existence when the notice was issued. Accordingly, the requirements of the notice cannot be varied to accord with an expired planning permission relating to a three-bedroom dwelling.
21. As no other lesser steps are before me, the appeal on ground (f) fails.

The ground (g) appeal

22. The appellant contends that the time given to comply with the first requirement of the enforcement notice is too short, and requests 6 months to 1 year as the flats are occupied by tenants. The appellant would also like to take the opportunity to discuss other options with the Council to avoid the complete removal of the as-built premises.
23. I accept that a period of 3 months to require cessation of the residential use is too short and given 18 months has then been provided for the building works, a period of 6 months would strike the appropriate balance in this regard.
24. The 18-month period then provides ample opportunity for the appellant to discuss other options with the Council.
25. The appeal on ground (g) therefore succeeds to this extent.

Overall Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the deemed application.

Formal Decision

27. It is directed that the enforcement notice be corrected and varied by:
- deleting requirement 5. (1) of the enforcement notice and replacing it with the words '*(1) Cease the use of the Land as flats.*'
 - substituting '*6 months*' as the time for compliance in section 6. 1. of the enforcement notice.
28. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR