



Appeal Decision

Site visit made on 24 June 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/Q1445/W/24/3337123

26 Church Road, Hove, BN3 2FN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Gandom Restaurant against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/00622.
 - The development proposed is installation of 2no. air extraction systems comprising canopy, extractor duct, silencer and exhaust cowl and 1no. fresh air system with high pressure fan to rear elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In relation to the description of development I have deleted '(Retrospective)' as this wording is superfluous and revised the number of ducts (flues) to reflect those that exist on site. Based on my site visit and the submitted evidence, it was clear that the number of ducts installed had changed up to and after the determination of the application. Some of the ducts have been removed but I note that the Council considered the proposal on the basis of those shown on the original application plans.
3. For clarity and to avoid any further confusion, I invited the Appellant to submit a revised plan showing the retained ducts for which planning permission was sought. This plan was received on 8 July 2024, drawing No. 01 (Date: July 2024) and shows two air extraction ducts and one fresh air duct. Whilst I invited the Council to comment on this plan, no response was received and I have assumed that they continue to object to the proposal.
4. Since the application was refused the National Planning Policy Framework (Framework) has been revised, most recently in December 2023. However, the appeal was lodged on 18 January 2024 and both parties will have had the opportunity to address any changes to the Framework in their Statements of Case. Most of the relevant policies in the Framework remain unchanged, albeit some of the paragraph numbering has changed. For these reasons, I have not invited any further submissions from the parties.

Main Issues

5. The main issues are: (a) the effect of the proposed development on the character and appearance of the host property and surrounding area with

particular regard to its impact on various heritage assets; and (b) whether sufficient information has been provided to demonstrate that the level of noise and disturbance from the ducts would harm the amenity of neighbouring occupiers.

Reasons

Character and appearance

6. The appeal site lies within The Avenues Conservation Area (TACA). Section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. Similar advice is to be found in the Framework and in policy CP15 of the Brighton & Hove City Plan Part 1 (March 2016) (BHCP1) and policies DM21, DM26 and DM29 of the Brighton & Hove City Plan Part 2 (October 2022) (BHCP2).
7. The appeal site also lies within the setting of a Grade II Listed Building, 1 - 10 Victoria Grove (Victoria Mews). Section 66 of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special regard must be had to the desirability of preserving that buildings setting. Similar advice is again to be found in the Framework and in policy CP15 of the BHCP1 and policies DM26 and DM29 of the BHCP2.
8. In relation to the TACA, whilst I have been provided with a plan of the area I not been provided with any appraisal for the TACA, and have, therefore, based my assessment on the evidence available and my observations on site.
9. As the name implies, the TACA is centred on the four 'Avenues' that run parallel to each other from north to south and towards the seafront. These 'Avenues' include properties with varying architectural styles that mainly date from the Victorian period. They are mostly 3 – 4 storey terraced and semi-detached properties, with a mix of yellow and red brick, and slate roofs. The properties retain a number of their original and historic features. The scale of these buildings and their architectural detailing is an important part of the special interest of the area.
10. Another feature of the 'Avenues' is their width, which effectively extends to three lanes with the central lane sufficient to accommodate two lines of car parking. Some of the 'Avenues' are lined with street trees that add to the special character of the area. An integral and important feature that also contributes to the special interest of the area are the various traditional mews properties, good examples of which are located to the rear of Church Road on Church Road Lane, part of which runs behind the rear of the appeal site.
11. All of the above factors contribute, in my judgement, to the significance of the TACA as a whole.
12. The appeal proposal relates to the installation of three ducts (flues) on the rear elevation of the appeal site. As these are already in place, planning permission is sought retrospectively for their retention.
13. The host property comprises four storeys and is part of a terrace of similar properties on the southern side of Church Road. The ground floor is a restaurant with the upper floors in residential use. A similar arrangement of commercial and residential uses appears to exists on the properties that form

part of the same terrace, with a number of the ground floor units also trading as restaurants.

14. The rear of the appeal site, as with adjoining properties, can be accessed from Second Avenue, via Church Road Lane. This narrow Lane runs along the length of the terrace of properties. The Lane continues to the east, on the other side of Second Avenue, to the rear of the next terrace of properties on Church Road. The Lane to the rear of the appeal site is a 'dead end' and largely provides access to the properties on Church Road. A number of the properties have rear extensions and other alterations include external metal staircases and ducting, with the main rear walls largely rendered in colours ranging from natural to white and cream.
15. To the south of the appeal site is the red brick and rendered side wall to Victoria Mews, which includes some small ground floor windows. The main entrance to Victoria Mews is just around the corner to the south of the Lane, accessed from Second Avenue. The mews is essentially a 'U' shaped courtyard with, according to the 'Official list entry', the original mews now comprising dwellings over garages with a central stone courtyard. Whilst some of these properties have been altered, most of the mews properties retain their original traditional features and architectural detailing.
16. The Council's Statement of Case states that there is no objection in principle to the installation of extract systems (ducting) on the rear elevation to the host property, but that their objection relates to the number, size and height of the ducts installed. That finding was, as I mentioned earlier, based on the four ducts shown on the original application plans, which has now reduced to three, including alterations to the positioning of one duct, as I explain below.
17. For ease of reference, I have adopted the numbering of the ducts as set out in Figures 1 and 2 (photographs) of the Appellants statement 'Revised Flue Arrangements' ('Ducts remodelling and removal') (dated 09/05/2023). In relation to the ducts numbered '2' and '3', shown on the left of the revised rear elevation plan, these are, in my view, acceptable in that they do not result in any significant harm to the character and appearance of the area. However, duct number '5', shown on the right hand side of the revised rear elevation plan, extending above the eaves to the host property, is excessive in terms of its height, size and position relative to the rear main wall of the host building.
18. Whilst I accept that the Appellant has sought to reposition duct number '5' closer to the main rear wall, they acknowledge that it has not been possible to reposition it flush to the wall due to the stepped nature of the rear extensions and the shape and positioning of the gutters. As a result, this duct is visually prominent in public views from Second Avenue. Whilst I accept that there is other ducting in the background these are not as visually prominent as the proposal. I also note that there is a similar duct in the foreground (it appears to be at the rear of 22 Church Road (No.22)), but this is flush with the main rear wall and screened from Second Avenue by the rear of 20 Church Road.
19. Even so, I understand that there are no planning records in relation to any other existing ducting on the rear terrace and the status of the duct to the rear of No.22 and properties west of the appeal site, is unclear in terms of whether they are lawful or not. Notwithstanding this, I can only consider the proposal that is before me and determine it on its individual merits. Furthermore, the existence of other ducting cannot be a justification in itself for the proposal and

it does not override the need to assess the proposal in relation to its impact on the character and appearance of the area, the designated heritage assets and in relation to the prevailing development plan policies.

20. Turning to the setting of the Listed Building, as I indicated above, duct number '5' is highly visible from Second Avenue. As I also confirmed earlier, the traditional mews are an important and integral part of the special interest of the TACA. In this particular case, the importance of their architectural and historic interest has been recognised further by its listing. As such and as duct number '5' is visible in views of the mews from Second Avenue, it has a negative impact on the setting of the mews.
21. Again, I accept that other ducting further along the terrace is visible, but as I confirmed earlier, this aspect of the appeal proposal is more prominent and there is no evidence before me that this other ducting benefits from planning permission or is lawful, and its existence does not therefore set a precedent. The impact on the setting of Victoria Mews is accentuated by the narrowness of the Lane and the short distance that thus separates the rear of the host and the proposed ducting from the side elevation of the mews. As a consequence, duct number '5' sits within the setting of this Listed Building and whilst the level of harm that arises is modest, this aspect of the proposal does not preserve the setting of the Listed Building.
22. The impact of ducts '2' and '3' on the setting of the mews is, due to their reduced size, height and siting, more limited and I am satisfied, on balance, that they leave the setting of the mews unharmed. In relation to duct '5', ducting of this size and height might be more acceptable if it related better to the rear wall of the host or was flush with it and thus avoided the stepped projections of the existing design.
23. For the reasons set out above, I find that proposed duct number '5' results in harm to the character and appearance of the TACA and as such it would not preserve or enhance the character or appearance of the TACA. Similarly, I find that duct number '5' would result in harm to the setting of Victoria Mews. As is required, particularly by the Framework, considerable importance and weight must be attached to the harm to these heritage assets. The proposal leads, in my view, to less than substantial harm to the significance of these heritage assets, with the level of harm itself high, which must be weighed against the public benefits of the development.
24. Whilst I accept that some form of ducting is required for the existing restaurant business and that in turn the business supports local jobs as well as the vitality of the commercial area of Church Road, these public benefits can only, in my view, be accorded moderate weight and they would not be sufficient to outweigh the harm I have identified to the significance of the heritage assets.
25. Based on the evidence before me, therefore, neither these nor any other public benefits, delivering either economic or social or environmental objectives, are sufficient to outweigh the level of harm I have identified to the significance of the heritage assets.
26. Accordingly, I find that the retention of proposed ducts numbered '2' and '3' to be acceptable but that the retention of proposed duct number '5' is contrary to policies CP15 of the BHCP1, policies DM21, DM26 and DM29 of the BHCP2 and paragraphs 195, 203, 205 - 206 and 208 of the Framework.

Living conditions – noise & disturbance

27. Policy DM20 of the BHCP2 states that development will be granted planning permission where it would not cause an unacceptable loss of amenity to existing and/or adjacent residents. The supporting text at paragraph 2.155 adds that the negative impact of development can normally be addressed through design and mitigation, if these are considered early in the design of a development or proposal. The Council contend that insufficient information has been provided to demonstrate that the level of noise and disturbance associated with the proposed ducting would not result in harm to the amenity of the occupiers of neighbouring dwellings.
28. The Appellant considers that the information submitted with the application to be sufficient in this respect. However, the information I have been provided with is simply manufacturers brochures with technical data on the components that make up the ducting, including general information on specification, sound emissions (levels), operation and performance. There is no information that is specific to the appeal site and the proposed ducts in the form of a noise impact assessment to show how the units would operate against existing background noise levels.
29. The above finding is consistent with that of the Council's Environmental Health Officer (EHO), whose comments are summarised in the Delegated Report. The EHO noted that the Appellant had specified the type of plant installed, but had not demonstrated how the units would operate to a noise level not exceeding 5dB below background levels, and that to address this required the submission of an acoustic (noise) report carried out by a competent acoustic engineer.
30. I accept that there are other legislative regimes that seek to control noise and pollution nuisance, but I concur with the Council that, in order to determine whether the proposal complies with the requirements of policy DM20 of the BHCP2 and would not cause unacceptable harm to the living conditions of neighbouring occupiers, evidence in the form of a noise impact assessment is required. Without such an assessment I am unable to reach a finding on this issue.
31. Consequently, I agree with the Council that insufficient information has been provided to demonstrate that the level of noise and disturbance from the proposal would not harm the amenity of the occupiers of neighbouring dwellings. This is not matter that could be controlled by condition as it relates to an issue that should be addressed at the outset in designing the ducting that would be suitable and appropriate for its local context.

Conclusion

32. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR