



Appeal Decision

Site visit made on 24 July 2024

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2024

Appeal Ref: APP/Q1445/W/23/3334297

37B Compton Avenue, Brighton, BN1 3PT

- 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 Mrs Annabelle Le Clercq against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/01784.
 - The development proposed is Installation of a safety rail to parapet wall to existing rear flat roof.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to privacy and noise and disturbance; and
 - the effect of the proposal on the character and appearance of the area; including whether or not the proposed development would preserve or enhance the character or appearance of the West Hill Conservation Area.

Reasons

3. The appeal site hosts a three storey over basement terraced building situated close to the junction of Compton Avenue and Buckingham Place. The rear of the building backs onto other rear garden areas and buildings along Bath Street. The building has been split into two residential units. This appeal relates to the unit on the upper floors of the building.
4. The proposal is for the installation of a safety rail to a parapet wall on top of a flat roof at the rear of the building. The proposed safety rail would be constructed from galvanised powder coated steel finished in anthracite grey or black. The safety rail would sit approximately 1320mm above the existing parapet which measures around 450mm.

Living conditions

5. The proposed railings would be installed on an area of flat roof at an elevated level. Due to the density of the built form and close-knit nature of properties within the area, this area of roof is in close proximity to windows which serve neighbouring residential properties. I note that some of these windows serve

- spaces such as stairwells, however, a number of these windows do appear to serve habitable rooms. The elevated position of the roof space also allows direct views into neighbouring garden areas.
6. Though the roof space is accessible at present, the installation of the proposed railings would create an attractive, easily useable and safe terrace space; the use of which would be tempting for the occupiers of the property.
 7. Those using such a space would have direct, high level and close views into neighbouring properties and gardens to such an extent that it would significantly harm privacy. Furthermore, with such limited separation distances and at an elevated position the use of the roof space in this way would give rise to additional, unacceptable levels of noise and disturbance to neighbouring residents.
 8. I acknowledge that in residential areas such as this some degree of mutual overlooking is commonplace. Indeed, I accept that some degree of overlooking is already present due to the existing orientation of windows and garden spaces. However, due to the possible viewing angles, the open outdoor nature and the lack of intervening glazing the use of a roof terrace would enable a degree of overlooking and noise and disturbance above that which is already present and which occurs where windows are close to each other.
 9. I note that it does not appear to be the appellant's intention to utilise the roof space as a terrace. However, without a barrier between the property and the roof area, the large window provides broadly unimpeded access and the installation of the proposed railings would readily facilitate such a use.
 10. I have considered the imposition of a condition to restrict access to the roof. However, though I accept that such conditions can be successful in some circumstances and are theoretically possible, the configuration of the development in this case would strongly undermine it in practice. The roof is at the rear of the property and it would be difficult for the Council to identify use above and beyond what is permitted. The factors which facilitate easy access are such that the temptation to use the roof space would be enormous; if not for the current occupiers then for those occupying the property in the future. As such, I find that the use of a condition would not be an enforceable or reasonable mechanism to limit the use of the roof space.
 11. For these reasons I consider that the proposal would cause harm to the living conditions of the occupiers of neighbouring properties. Consequently, the proposal would conflict with Policy DM20 of the Brighton & Hove City Plan Part Two, October 2022 (LP2). This policy states that planning permission for development will be granted where it would not cause unacceptable loss of amenity to the proposed, existing, adjacent or nearby users, residents, occupiers or where it is not liable to be detrimental to human health. The supporting text to the policy specifically sets out that roof terraces and balconies amongst others should be carefully designed to avoid overlooking.

Character and appearance

12. No 37 is a largely red-brick building which nestles between two somewhat taller buildings within a larger terrace which is largely finished in white render. The area has a dense, residential character and appearance.

13. The appeal property is situated within the West Hill Conservation Area (CA). The West Hill Conservation Area Character Statement (the Character Statement) states that the significance of Compton Avenue is the impressive streetscape whereby two continuous terraces of the 1850s face each other across a wide tree-lined street. The appeal property is part of one of these terraces and as such contributes positively to the significance of the CA.
14. The character and appearance of the rear of the properties in this area is notably different to the more formal, uniform and linear designs which are evident at the front. The rear of the properties comprises an assortment of built forms which lacks the same degree of architectural detail and cohesiveness which characterises the front.
15. At the time of my site visit I noted a number of other railings within the area. The front elevations of many of the properties in the area host a variety of metalwork railings above ground floor level with a traditional and simple character and appearance. To the rear, more similarly designed railings are present on a vast number of nearby properties. Including many in prominent elevated positions above ground floor level.
16. The proposed railings would sit within this context. The proposed materials would reflect those used elsewhere in the area and would be compatible with the traditional designs and materials of properties within the area. The proposed railings would also be situated within the more informal rear character area.
17. As such, the proposed railings would not appear unduly visually dominant or incongruous but would rather assimilate well with the existing character and appearance of the host building and the wider area. The development would preserve the character and appearance of the CA.
18. The proposal would, therefore, accord with the aims of Policy DM21 of LP2. Amongst other things this policy states that planning permission will be granted if the proposed development is well designed, takes account the existing character of the area and uses materials that complement the parent building. The proposal would also meet the aims of LP2 Policy DM26 which sets out that development proposals within conservation areas, including alterations, will be permitted where they preserve or enhance the distinctive character and appearance of that conservation area, taking full account of the appraisal set out in the relevant character statement.

Other Matters

19. I understand the appellant's desire to install the railings with safety in mind. I also note the appellant's need to maintain the roof. However, in my view, there are other measures which could be put into place to secure these aims which would not be detrimental to the living conditions of neighbouring occupiers.
20. At the time of my site visit I noted the existence of what appeared to be a roof garden at another property which was drawn to my attention in the appellant's evidence. However, the Council suggest that this garden does not appear to have permission and, as such, could be subject to enforcement action. In any event, the existence of other examples is not sufficient justification for granting planning permission; each case must be determined on its own merits based

on the specific circumstances at each site. These circumstances will rarely, if ever, be identical.

Conclusion

21. For the reasons set out above, and having considered all other matters raised, the appeal proposal would conflict with the policies within the development plan taken as a whole and there are no material considerations which would outweigh this conflict. The appeal therefore fails.

L J O'Brien

INSPECTOR