



Appeal Decisions

Site visit made on 22 October 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2024

Appeal A Ref: APP/Q1445/C/23/3322889

86-87 Preston Street, Brighton BN1 2HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Moussa Salama against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 25 April 2023.
- The breach of planning control as alleged in the notice is without planning permission the construction/installation of the following alterations to the Property:
 1. Tile cladding to the front and side elevations of the building;
 2. Tile cladding to the planter situated next to the entrance door;
 3. At the front elevation, the erection of raised platform with ramp and steps clad in tile, with glass balustrade with metal handrails, part enclosing the platform; and
 4. The installation of external flue to the side elevation of the Property.
- The requirements of the notice are to:
 1. Remove the external tile cladding from the front and side elevations of the building.
 2. Remove the handrails and glass balustrade from the frontage.
 3. Remove the ramp and steps from the frontage.
 4. Remove the raised platform and black and white floor tiles, making good the levels of the frontage.
 5. Remove the tiles from the planter situated next to the entrance door and make good the revealed wood.
 6. Remove in its entirety the external flue to the side elevation of the property.
 7. Make good the render on the front and side elevations to its previous form and materials prior to the unauthorised alterations taking place.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/Q1445/W/22/3296056

86-87 Preston Street, Brighton BN1 2HG

- 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 Mr Salama of Fish & Chips against the decision of Brighton & Hove City Council.
- The application Ref is BH2021/02433.
- The development was described as:
 1. The seating area outside the shop forms part of our premise as shown by the official copy (title plan) SX142789 (please find attached)
 2. Ground floor exterior walls cladded with tiles
 3. Fascia and first floor exterior walls tiled
 4. First floor box sign replaces previous restaurant sign "Istanbul Turkish Cuisine" as like-for-like replacement

5. Fish & Chips sign replaces previous restaurant sign "Mediterranean Cuisine" as like-for-like replacement
6. Vinyl text on the shop windows.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. Appeal A was also made under ground (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. However, that was withdrawn during the course of the appeal.
2. The development referred to in appeal B is largely the same as that in appeal A. However, the development subject of appeal A also includes the extraction flue on the side of the building and the description of development subject of appeal B refers to the large signage to the front of the building. I understand that ground (a) of appeal A only relates to the extraction flue. However, I will deal with the developments together.

Appeal A on Ground (a) and the Deemed Planning Application Appeal B

Main issues

3. The main issues are:
 - Whether the development preserves or enhances the character or appearance of the Regency Square Conservation Area; and
 - The effect of the development on the setting of nearby listed buildings.

Reasons

Regency Square Conservation Area

4. Preston Street runs from Western Road, that extends from the centre of Brighton toward Hove, to the seafront. To either side are a variety of commercial properties, a substantial proportion being in restaurant or hot food takeaway use. Fish & Chips is located on the side of the street behind which are the terraced houses of Regency Square. Development on this side of Preston Street appear to have originally been constructed to serve the houses on Regency Square and have evolved since then. Regency Square is an open area with terraced buildings to three sides and the former entrance to the West Pier, now home to the i360, at the sea end.
5. The significance of the conservation area derives from the square of houses forming Regency Square and the historic development of the surrounding area, including Preston Street.
6. There are a variety of styles and scale to buildings on this side of Preston Street. Nos 86-87 are single and two storey, with a flat roof over the single storey element. This allows views over the building to the taller buildings of Regency Square. The two storey element does not have windows to the front, but has a large advertising board for Fish & Chips. The front and side of the upper floor is covered with predominantly white tiles. Another advertising sign is on the single storey element.

7. There are other large signs that contribute to a slightly gaudy character to the street. However, the Fish & Chips signage and the tiling, that has a shiny finish, results in this building being particularly prominent within the street scene.
8. The seating area to the front of the building has black and white tiles to the ground with a metal and glass balustrade. These differ from other development in the street, including other seating areas to other properties that tend to have a less permanent and less bright character and appearance. This results in it being more dominant than other seating areas.
9. Overall, the signage, tiling and balustrade with handrails make the building particularly prominent in the street scene such that they harm the character and appearance of this part of the conservation area.
10. The flue is fixed to the side elevation of the building. It extends above the highest part of this building, although is seen against the backdrop of taller buildings at 85 Preston Street and the terrace on Regency Square to the rear. It appears as a utilitarian addition to the building. My attention has been drawn to other flues at Ephesus restaurant and 85 Preston Street. However, those are located to the rear such that they are less prominent. I understand they have also been subject of enforcement investigation, that at no. 85 is also subject of an enforcement notice appeal. As a result, these carry limited weight in considering the flue at nos. 86-87.
11. In addition, the i360 is visible from Preston Street. It comprises a tall, narrow, metal structure that protrudes above the buildings facing the seafront and Regency Square. As a result it is prominent in views and has some similarities in appearance, particularly from a distance, to a flue. Nevertheless, it has been constructed for a different purpose and has a different character such that its effect on the character and appearance of the conservation area differs from that of the flue at 86-87 Preston Street.
12. For these reasons, I conclude that the tile cladding, raised platform with ramp and steps, glass balustrade with metal handrails and the flue do not preserve or enhance the character or appearance of the Regency Square Conservation Area. The harm arising to the significance of the heritage asset is less than substantial. As a result, they are contrary to Policies CP12 and CP15 of the Brighton and Hove City Plan Part One (CP1), Policies DM18, DM21 and DM26 of the Brighton and Hove City Plan Part 2 (CP2) and the National Planning Policy Framework (the Framework) that seek to conserve and enhance the historic environment, including that development must preserve or enhance the distinctive character or appearance of the conservation area, taking account of the importance of street elevations and roofscape, and that building materials and finishes should respect the area.

Listed Buildings

13. To the rear of Fish & Chips is the grade II* listed terrace of 5-20 Regency Square. The front elevations are stucco and painted brick, facing over the open square with attached railings. The rear elevations are in clear contrast to the polite façades as they are less formal and have a more functional character. Those rear elevations are around 4 storeys in height with rooms in the roof and there is a variety of materials and architectural detailing utilised within them. Development on Preston Street, including Fish & Chips, appears

to have evolved over time, resulting in the current commercial character of the street.

14. 5-20 Regency Square is mainly experienced from Regency Square. However the composition of the rear elevations and its historical development can be experienced to some degree from Preston Street given the lower heights of buildings on that frontage. As such, 86-87 Preston Street is within the setting of the listed building. In these respects, the setting as experienced from Preston Street makes a limited contribution to the significance of the listed building.
15. 86-87 Preston Street is much lower in height than the listed building to the rear. As such, that building dominates the existing Fish & Chips building. Nevertheless, the bright shiny tiles and advertisements on the façade, tiled ground and balustrade, and the flue distract attention from the rear of those buildings. In addition, the flue has an industrial appearance contrasting with the domestic architecture of Regency Square, visible both in some views from Preston Street and from windows to the rear of Regency Square. Whilst the rear of the listed terrace is of a varied and utilitarian appearance, it nevertheless contributes to the understanding of the history and architecture of the listed building. The prominence of the materials used on Fish & Chips and the industrial character of the flue distracts from that element of the listed terrace. As a result, it diminishes the contribution that setting makes to the significance and special interest of the listed building.
16. For these reasons, I conclude that the tile cladding, raised platform with ramp and steps, glass balustrade with metal handrails and the flue do not preserve the contribution that setting makes to the special interest of the listed building at 5-20 Regency Square such that it harms the significance of the listed building as a heritage asset. The setting as experienced from Preston Street makes a limited contribution to the significance of the listed building, such that the harm is less than substantial. As a result, they are contrary to Policies CP12 and CP15 of CP1, Policies DM18, DM21 and DM29 of CP2 and the National Planning Policy Framework (the Framework) that conserve and enhance the historic environment, including the physical surroundings of, and the relationship with, heritage assets. It is also necessary to consider whether the setting was designed or informally occurred over time, including the degree of change to the setting that has taken place.

Public Benefits

17. The Framework states that where development leads to less than substantial harm to the significance of heritage assets, this harm should be weighed against the public benefits of the proposal including securing its optimum viable use.
18. The restaurant and takeaway use contributes to the vitality and viability of Preston Street such that it provides a viable use to the building. This contribution is a public benefit arising from the scheme. However, it is not clear that removal of the features subject of the enforcement notice would result in the use becoming unviable such that the business would have to close. There may be alternative options for the extraction system and the outside seating area, but it is unclear whether they have been explored. I will return to this in relation to the extraction system in the ground (g) appeal.

19. For these reasons, I conclude that the public benefits of the proposal do not outweigh the less than substantial harm to the significance of the heritage assets.

Other Matters

20. My attention has been drawn to appeal reference APP/Q1445/A/13/2193822. That related to an enclosed smoking area to the front of a restaurant nearby, in Western Road. That took into account the character and viability of the area and I have taken those matters into account in the main issues in this case. There are similarities in the form of development as they involved seating areas to the front of the restaurants. Nevertheless, the character and appearance of the seating area and surrounding area appear to differ in this case. As a result, I have considered the development on its individual merits.

Conclusion

21. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

Appeal A on Ground (g)

22. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
23. The Council have provided a 6 month period for compliance with the enforcement notice. The appellant suggests that this is not reasonable in relation to the removal of the flue as it is likely to result in the closure of the business or loss of revenue and hardship. They seek time to enable negotiation of an alternative extraction system and its installation. They suggest a period of 12 months would be required to allow that to take place.
24. An extraction system is necessary to enable the restaurant to continue operating. As such, a reasonable period is required to enable an alternative system to be found that would overcome the harm to the setting of listed buildings and that would preserve or enhance the character or appearance of the Regency Square Conservation Area. Nevertheless, I consider a period of 9 months would be sufficient to complete this process and, in this case, would be reasonable.
25. I note that the appellant does not suggest that the period of compliance is unreasonable in relation to other requirements of the notice.
26. For these reasons, I conclude that the appeal under ground (g) should succeed and I will vary the notice in relation to the external flue to require a 9 month period for compliance.

Formal Decisions

Appeal A

27. It is directed that the enforcement notice is varied by the deletion of "6 (six) months from the date the notice takes effect" as the period for compliance and its substitution with:

"In relation to requirement 6. Remove in its entirety the external flue to the side elevation of the property within 9 (nine) months.

"In relation to all other requirements within 6 (six) months."

28. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

29. The appeal is dismissed.

AJ Steen

INSPECTOR