



Appeal Decision

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 Ref: APP/Q1445/C/22/3304565

85 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 Aron George against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 13 July 2022.
- The breach of planning control as alleged in the notice is without planning permission installation of external flue to the rear elevation of the Property.
- The requirements of the notice are to remove in its entirety the unauthorised external flue from the rear elevation of the Property.
- The period for compliance with the requirement is: 2 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.

Preliminary Matters

1. I understand that the Brighton and Hove City Plan Part 2 was adopted during the course of the appeal and supersedes the Brighton and Hove Local Plan.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

2. The main issues are:
 - Whether the external flue on the rear elevation preserves or enhances the character or appearance of the Regency Square Conservation Area; and
 - The effect of the flue on the setting of nearby listed buildings.

Reasons

Regency Square Conservation Area

3. Preston Street is located within Regency Square Conservation Area, to the rear of the terraced houses fronting Regency Square itself. Regency Square comprises terraced houses around an open area with the i360 at the end, at what was the entrance to the West Pier. The remainder of the conservation area contains dense development around a grid of streets and squares between Western Road leading from the centre of Brighton toward Hove, and the seafront.

4. Preston Street leads from Western Road to the seafront. Development on the street may have originally been constructed in the grounds of and to serve the houses on Regency Square. It is now lined with mainly commercial properties with a variety of building styles, a substantial proportion being in restaurant or hot food takeaway use, contributing to the vitality and viability of the area.
5. 85 Preston Street is a three storey building between lower buildings. Whilst the character and appearance of the buildings on this side of Preston Street differs from other surrounding development, this reflects its historic development and that contributes to the character and appearance of the conservation area.
6. Consequently, 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.
7. The flue is a utilitarian addition to the rear of 85 Preston Street that protrudes above the eaves. Its location means that views from the street are limited to those over the lower neighbouring buildings. It is also visible from surrounding development, particularly windows in the rear elevations of the houses fronting Regency Square. Although its location means it is not prominent and flues are a common feature on restaurants and takeaways, it is an incongruous feature in the historic street scene.
8. My attention has been drawn to other flues on restaurants and takeaways in Preston Street. That at Ephesus is similarly located to the rear, although visible above the flat roof of that building. That on the Fish and Chip shop is located on the side elevation of the two-storey element of the building. As a result, it is significantly more prominent in views from the road. I understand that both are subject of enforcement investigation by the Council. That on the Fish and Chip shop is also subject of an enforcement notice and appeals. As a result, limited weight can be placed on their contribution to the character and appearance of the conservation area.
9. The i360 is a tall, narrow structure constructed in metal that is visible in views above the buildings on Preston Street, Regency Square and Kings Road. As a result, it has certain similarities in appearance, particularly from a distance, to a flue. Nevertheless, it is a different structure constructed for a different purpose such that it has a different effect on the character and appearance of the conservation area.
10. For these reasons, I conclude that the flue does 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, it is contrary to Policies CP12 and CP15 of the Brighton and Hove City Plan Part 1 (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 character or appearance of the conservation area, taking account of the importance of the roofscape.

Listed Buildings

11. 5-20 Regency Square is a block of terraced houses to the rear of 85 Preston Street that fronts Regency Square and is listed Grade II*. The rear of these houses back onto development on Preston Street, including no. 85. These elevations are in a variety of styles and materials and around 4 storeys in height with rooms in the roof. Whilst the fronts are polite façades of stucco and painted brick with attached railings, the rear elevations overlooking the flue contrast in being less formal with a more functional character. They are around 4 storeys in height with rooms in the roof constructed in a variety of materials and architectural detailing. The development on Preston Street appears to have informally occurred over time, resulting in the current commercial character of the street.
12. The listed building 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 street. As such, the appeal site 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.
13. The flue to the rear of 85 Preston Street is a utilitarian addition of industrial appearance. That industrial appearance appears somewhat incongruous given the domestic character and appearance of the listed building and other development within its setting. As a result, it diminishes the contribution that setting, in this respect, makes to the significance and special interest of the listed building.
14. For these reasons, I conclude that the flue does not preserve the setting of the listed building at 5-20 Regency Square such that it harms the significance of the listed building as a heritage asset. As the setting experienced from Preston Street makes a limited contribution to the significance of the listed building, the harm is less than substantial. As a result, it is 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. Consideration of development should also 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

15. 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.
16. The appellant suggests that removal of the flue would lead to the closure of the takeaway business that contributes to the viability and vitality of Preston Street as a commercial route within Brighton. However, it is unclear what alternative options for an extraction system at the business have been explored, other than an extraction system running through the flats above, and whether an alternative solution could be found that would preserve or enhance the character and appearance of the conservation area and setting of

the listed building. It may be possible to consider this during the period of compliance, so I will return to this in the appeal on ground (g).

17. 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

18. 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 in Western Road, close to Preston Street. I have taken the character and viability of the area into account, as they were taken into account in that case. However, the form of development in this case differs from the smoking area proposed in that case.

Conclusion

19. 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.

The Appeal on Ground (g)

20. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
21. The 2 month period for compliance set out within the enforcement notice would be sufficient to enable the flue be removed in accordance with the notice. However, a flue is essential to enable the hot food takeaway business to operate, so would have the likely effect that the business would need to close at least until such time as an alternative extraction system could be installed and become operational. As a result, this period is unreasonable.
22. The appellant suggests that a period of 12 months would be sufficient in order to agree an alternative proposal with the Council, obtain planning permission and install it. However, I consider that would be a longer period than would be required to complete this process. In the circumstances of this case, I consider a period of 9 months to be reasonable.
23. For these reasons, I conclude that the appeal under ground (g) should succeed and I will vary the notice to require a 9 month period for compliance.

Formal Decision

24. It is directed that the enforcement notice is varied by the deletion of 2 months and its substitution with 9 months as the period for compliance.
25. 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.

AJ Steen

INSPECTOR