



Appeal Decisions

Site visit made on 14 October 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2024

Appeal A Ref: APP/Q1445/W/24/3337773

St Agnes Church, Newtown Road, Hove BN3 7BA

- 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 Natural Fit Gym against the decision of Brighton & Hove City Council.
 - The application Ref is BH2022/02810.
 - The development was described as 'retrospective planning application for high level ventilation grilles to gables, handrail and wall wash up/downlights at second floor'.
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Appeal B Ref: APP/Q1445/W/24/3337775

St Agnes Church, Newtown Road, Hove BN3 7BA

- 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 Natural Fit Gym against the decision of Brighton & Hove City Council.
 - The application Ref is BH2022/02809.
 - The development proposed was described as 'translucent glazed screens at second floor level, south'.
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Decisions

1. Appeal A is dismissed and Appeal B is dismissed.

Preliminary Matters

2. There are two linked appeals by the same appellant on this site. Each banner header above contains a description of development used by the appellant in the planning application forms. To avoid duplication I have dealt with the appeals together, except where indicated.
3. The development in Appeal A has been carried out. The Council does not object to the wall wash up/downlights and I have no reason to find otherwise.
4. The appellant submitted a revised plan with Appeal A¹. It shows the siting of a 'barrier' now promoted as an optional alternative to one of the two translucent glazed screens in Appeal B. The appellant considers that the revised plan could be approved by a condition in either appeal. Apart from indicative height, there is no design for this barrier, including materials. The appellant also now maintains that the other translucent glazed screen is optional and could be omitted to potentially enable a split decision in Appeal B.
5. But the appeal process should not be used to evolve a proposal. If planning permission was granted in either appeal, these changes and differences would

¹ Drawing number 0578.PL.2002

be in conflict, or no longer consistent with the operational part of one or both descriptions of the development that was applied for (and the descriptions used by the Council in its decision notices). I have not, therefore, taken the revised plan into account but determined both appeals on the same plans and development applied for as did the Council when it made its decisions and undertook public consultation.

6. The appellant has created a new external doorway in the second floor south elevation of St Agnes Church. This is to facilitate access to a flat roof for use as a terrace. The appellant and the Council disagree about whether the doorway or terrace is development or requires planning permission. It is not the remit of this section 78 appeal to formally determine this. Though shown in each appeal application plans, the doorway and terrace are not part of the appellant's descriptions of development or those used by the Council. It is common ground that the handrail in Appeal A also facilitates use of the flat roof as a terrace, as would the translucent glazed screens in Appeal B. This is what the appellant intended in submitting each application and it is how the Council made its decisions. I have considered both appeals on the same basis.

Main issues

7. The main issues are:

- the effect of the design and siting of the ventilation grilles and handrail in Appeal A, and the translucent glazed screens in Appeal B, on the character and appearance of St Agnes Church; and
- in both appeals, the consequences of this development applied for on the living conditions of the occupants of Nos.14, 16, 18 and 20 Fonthill Road, having regard to noise and privacy.

Reasons

Character and appearance

8. St Agnes Church is a largely intact early 20th century ecclesiastical building that has been renovated, including a sympathetic single-story mainly glazed modern extension. It is in use as a health and fitness centre. The Extensive red brick elevations and large steeply pitched grey slate main roof are complemented by contrasting decorative stone detailing. Though not a local or statutory listed building, St Agnes Church is distinctive amongst surrounding mostly modern development with notable stature and elevated presence on this sloping corner plot in the Newtown Road and Goldstone Lane streetscenes.

Ventilation grilles

9. One grille is positioned in a narrow horizontal stone band that runs flush across the west gable of St Agnes Church. Though aluminium the darker grey colour is similar to the main slate roof, but a stark contrast next to the light coloured stone either side of it. The square shape also juts above and below the stone, edging into brickwork and it is mounted high up, off-set to one side in this otherwise symmetrical upper part of the gable. Because of the acute upward angle of view, this grille is not obvious from the pavement a short distance away. This intervention to the fabric of the building is, though, more noticeable in longer distance public views from Newtown Road to the west and Goldstone Lane to the north.

10. However, a condition could ensure that the grille was replaced with another to match the colour of the stone or be treated (painted/coated) to achieve the same effect and thereafter maintained as such. It would still overlap the stone band top and bottom but only over a short section and notwithstanding the difference in materials have a more sympathetic, less jarring presence. The grille is otherwise not inordinate in size and is inset level with the plane of the gable. It would not, therefore, fundamentally undermine the overall linear continuity of this stone detail or unduly detract from its synchronous parallel alignment with a similar shorter stone band above it. Moreover, the asymmetric position avoids overly close proximity to an impressive lightly stained glass window below and keeps the integrity of the ornate stone surround and reveals intact.
11. An identical grille in the east gable occupies essentially the same equivalent position in this part of St Agnes Church. There is no evidence of banding, windows or other stone detailing in this gable. It faces a narrow intervening gap to adjacent tall buildings, inset behind buttressing away from the pavement and in colour is better assimilated against just the red brick. The upper part of this grille can only be glimpsed in a specific fleeting view at an acute angle from Newtown Road and in a similar, more distant view from Fonthill Road to the south so it is not prominent or conspicuous.

Handrail

12. A low brick parapet wall capped by a course of chamfered coping stones runs along the indented perimeter of the flat roof. This feature stretches across the long south elevation of St Agnes Church, including taller triangular 'gable' ends projecting forward over two entrance vestibules below. This part of St Agnes Church steps down in scale and massing from the main body of the building behind, closer to ground level in Newtown Road and, at one end, Goldstone Lane. The handrail runs inside the parapet with a short return section at the east end inset further from the edge of the flat roof. It is tall enough to safeguard users of the roof as a terrace and the grey colour is compatible with other features at St Agnes Church, such as ornate boundary wall railings.
13. However, even at 50mm in diameter, the horizontal and vertical handrail steel tubing has an overly thick profile with more pronounced, bulging connecting steel brackets or sockets. These utilitarian components are also reflected in method of construction by attachment bolted partway up to the rendered inside face of the parapet. Although it is functional this crude, incongruous structure essentially resembles scaffolding and is usually a temporary not permanent arrangement.
14. Consequently, despite following the main profile of the parapet and not fixed to or touching the coping stones, the handrail is close enough that this lack of refinement jars against this most important and carefully crafted feature of this wall. It also protrudes sufficiently far enough above the coping stones that this discordant juxtaposition, including disruptive sequence of vertical posts, connectors and linear alignment, visually cuts across and in front of the taller red brick elevation behind, including buttresses and some stone detailing such as ornate windows. This undermines the integrity and cohesiveness of this part of St Agnes Church. It also detracts from the way the building is experienced from ground level in close views next to it and in more distant views from both directions along Newtown Road, including at the junction with Goldstone Lane.

15. A condition could ensure that the steel tubing was painted or coated to match the colour of the coping stones. Nevertheless, this would not overcome the unacceptable innate physical properties and position of this handrail or all of the negative impacts outlined above.

Translucent glazed screens

16. An initial 2m high section of the east screen would be positioned towards one end of the terrace, next to a taller part of the south elevation behind. It would step down in height but only to 1.8m with a perpendicular alignment jutting out a long way forward over one vestibule, close to the edge of this part of the parapet closest to Newtown Road. A smaller section of the similar west screen, at the other end of the terrace, would step down from 2m to 1.8m. Though shorter than the east screen, the more intricate alignment of this screen would wrap around the chamfered corner of this end of the parapet and terrace.
17. The glass in each screen would not be transparent (clear). In the absence of objective evidence to the contrary, translucent glass usually has a finish or innate property, such as tinted or frosted. Accordingly, both screens would have discernible visual presence, even against St Agnes Church, adjoining buildings or the sky. Despite an elevated position, partly obscured by the parapet, a significant upper part and surface area of each screen would project above the coping stones. This discordant angular, visual clutter would disrupt the broadly uniform linear plane of this part of the south elevation behind and as such be unduly prominent in these more exposed positions close to edges and parts of St Agnes Church. This intrusive, conspicuous presence would be noticeable in public view from Newtown Road in both directions and from Goldstone Lane in respect of the west screen.
18. The uniformly lower balcony screens in an adjoining modern block of flats, mainly facing Newtown Road, and in a terrace of townhouses facing Goldstone Lane are clear glazed. They have plainly been designed and sited as an integral part of these contemporary buildings from the outset, whereas the stepped screens in this appeal would be a discordant adjunct.

Conclusions on character and appearance

19. In Appeal A, I find that with a suitable approved colour for the west gable ventilation grille, the design and siting of both grilles would not result in harm to the character or appearance of St Agnes Church. Whereas the design and siting of the handrail does cause significant harm to the character and appearance of St Agnes Church. In Appeal B, I find that each translucent glazed screen would cause significant harm to the character and appearance of St Agnes Church.
20. Consequently, the development as a whole in Appeal A and that in Appeal B does not comply with Policy CP12 of the Brighton & Hove City Plan Part One, March 2016 (CPP1) or with Policies DM18 and DM21 of the Brighton & Hove City Plan Part Two, October 2022 (CPP2). These policies include that in design and siting, alteration of buildings should make a positive contribution to the visual quality of the local environment having regard to the scale and shape of buildings, materials and architectural detailing.

Living conditions

Ventilation grilles

21. In Appeal A, the east gable grille is in close proximity to some rooms with rear facing windows, including bedrooms, over three floors and the back gardens of adjoining dwellings at Nos.14, 16, 18 and 20 Fonthill Road. Amongst other reasons, occupants of all these dwellings objected at application and appeal stages because when the ventilation system operates, the position of the grille is said to result in noise that adversely affects normal domestic use and activity at these properties and undermine well-being. Give the hours the centre operates, this impact is likely to include quieter times of the day such as early evening and weekend mornings or when windows in these dwellings may be open, such as throughout the summer. This is when people generally do not expect serious intrusion and anticipate better quality of life. These concerns were endorsed by some Councillors.
22. Ventilation equipment installed in the exposed vaulted roof void at the east end of St Agnes Church avoids significant interventions or conflict with important internal and external structure or fabric of the building. This has influenced the position of the east grille. This equipment is also purposefully aligned with similar equipment at the west end of the building, including to ensure requisite air flow and distribution throughout the centre. It was in operation at my site visit but this was during the day, so not likely fully representative of the alleged harm; including that passing traffic was a main noise source experienced outside from the closest point to the grille (and these dwellings) at the east end of the roof terrace.
23. Notwithstanding that noise from this source was not a reason for refusal or pursued by the Council in its appeal statements, the appellant's Noise Impact Assessment (NIA), submitted at application stage, does not address the ventilation equipment, including this grille². Nor does the appellant's combined appeal statement. There is also no evidence this was considered by the Council's environmental health officer (EHO). The Council's planning officer did not detect any significant noise from the grille, but there is nothing to confirm that their site visit was other than also during a weekday.
24. In combined final comments the appellant has referred to suggested conditions to control the hours of operation and noise levels of this machinery or plant as a response to these interested party representations. They are also promoted by the appellant on the basis that the same or similar conditions were applied by the Council in granting planning permission for first floor ventilation ducts in the north elevation of St Agnes Church³. The Council suggested similar conditions to the appellant in this appeal but on a without prejudice basis.
25. Consequently, there is no objective evidence before me about any actual noise from, or due to, the position of the east gable grille. Nor whether it is directly comparable to these other ducts granted permission by the Council (such as in siting, size or orientation to dwellings or gardens). Moreover, any potential mitigation measures that might be required for this grille, including the appellant's or Council's suggested conditions, have not been informed by specific noise assessment. It has not been suggested that these conditions are

² Acoustic South East Noise Impact Assessment, 25 April 2023 – page 3, section 1 'scope'

³ BH2022/02808

universally applicable. I have also not been informed whether, if necessary, it would be possible to re-position the east facing grille (such as to also be north facing, through the main rear roof slope) and still connect to the internal ventilation equipment already in situ. Nor if a silencer or baffle (or some other such remedial measure) could be incorporated and by any of these means maintain efficient and effective operation of the ventilation system.

26. I cannot, therefore, be certain that the suggested conditions are necessary, relevant to the development in this appeal or reasonable, so meet the relevant tests⁴. Nor that they are anyway the only acceptable measures or would be effective. This includes because if such mitigation is required, the early morning (07:00) to late evening/early night time (21:15) hours of operation sought by the appellant — daily, throughout the year, including weekends and public holidays — would be overly incessant and potentially coincide with when bedrooms might be used by children trying to sleep or gardens used for outdoor relaxation.

Handrail and translucent glazed screens

27. With the handrail and translucent glazed screens in situ, the appellant intends the terrace to be used by customers of the centre to sit and chat or relax before, between or after gym classes. No.20 Fonthill Road is too distant and set back on its plot to be potentially affected by any consequence of the handrail or these screens. But the rear facing windows and back gardens of Nos.18, 16 and 14 are in progressively closer proximity to the east end of the roof terrace.
28. The appellant's NIA confirms it is likely that voices in the terrace would exceed the background noise level at No.14, including be audible inside rooms when windows are open, so be noticed. Nos.16 and 18 are further away from this part of the terrace, at more of an angle and there is no objective evidence that occupants of these dwellings would experience these same effects.
29. Subject to a condition, the appellant's suggested Noise Management Plan (NMP) could ensure the terrace is only used for the intended purpose, not gym classes or amplified music or spoken instructions. Also, the far east end of it restricted to access for building maintenance only. The NMP could also include hours of use, number of people, signs displayed to encourage respectful use of the terrace and monitoring by centre staff with a complaints procedure for neighbours, if necessary. The Council has planning enforcement powers to investigate alleged breach of conditions and, if expedient, take enforcement action. It also has environmental health powers to investigate and remedy statutory noise nuisance.
30. However, there is no evidence that the NMP would fundamentally alter the level or intensity of voices that would nevertheless still be experienced by the occupants of No.14 as a consequence of the handrail or these screens, thus when the terrace was used for its intended purpose. I have not been informed that this noise would cause a statutory nuisance and the impact of noise on residential amenity for planning purposes can occur at a lower level. The appellant does not, anyway, agree to the hours of use suggested by the Council's EHO (ie 08:00 to 18:00 Monday to Friday, 09:00 to 17:00 Saturday and closure Sunday). Despite the appellant's more conducive morning start time (09:00) there is no apparent reason why voices during the significantly

⁴ Planning Practice Guidance paragraph 21a-003-20190723

later required evening finish time (21:00) would not therefore have adverse consequences for the occupants of No.14, such as for bedroom or garden use.

31. Though also referred to by the appellant as 'noise barriers' and 'acoustic screening' that 'will reduce noise travel', the NIA contains no objective evidence about any specific level of noise attenuation from the proposed east translucent glazed screen. Nor about the effect of any other mitigation measure, such as a similar screen or other barrier positioned further from No.14 to increase distance between people's voices and this property.
32. The position and dimensions of the east translucent glazed screen would otherwise be tall and long enough and (subject to a condition) have sufficient blur to prevent actual or perceived intrusive views from the terrace towards the gardens of Nos.14, 16 and 18 and all of these rear windows, except in the second floor. But even if these rooms were used as bedrooms, the glimpsed upward angle of view from the closest part of the terrace would be towards part of the ceiling of No.14 and at Nos.16 and 18 also be further limited by a sideways line of sight. Shallower perpendicular views from further away in the terrace, over this screen towards this room at No.14 would be sufficiently distant so not intrusive, with equivalent windows at Nos.16 and 18 not visible.
33. These clear glazed narrow secondary rear windows could also have curtains or blinds drawn or windows closed during private or personal activity, which is likely to be more transient in nature, such as dressing. This would not be overly onerous or unduly interfere with use of these rooms (including natural ventilation, daylight and sunlight) because the main fenestration — a pair of glazed balcony doors with floor to ceiling glazed side windows — faces Fonthill Road in the other direction.

Conclusions on living conditions

34. In Appeal A, I am not satisfied the appellant has demonstrated that the east gable ventilation grille does not cause harm to the living conditions of the occupants of Nos.14, 16, 18 and 20 Fonthill Road having regard to noise. I am also not satisfied the appellant has demonstrated that the consequences of the handrail in Appeal A would not cause harm to the living conditions of the occupants of No.14 Fonthill Road having regard to noise. In Appeal B, I find that with suitable approved glass, the consequences of the proposed translucent glazed screens would not result in harm to the living conditions of the occupants of Nos.14, 16 or 18 Fonthill Road having regard to privacy.
35. Consequently, in these circumstances this development in Appeal A does not comply with CPP2 Policy DM20 whereas the development in Appeal B does. This policy includes that development should not cause unacceptable loss of amenity to existing, adjacent or nearby residents.

Other Matters

36. The appellant is entitled to seek planning permission retrospectively. Actual or perceived effect of development on property value is a private matter, whereas the planning system operates in the wider public interest. Neither matter is a material consideration in my decisions.
37. Albeit a snapshot, I saw that the centre is well-used so likely valued by staff and customers but these benefits are already established. The terrace, as would be facilitated by some development in both appeals would, though,

expand the practical use and attraction of the centre so likely help sustain it. These outcomes would be aligned with policies of the Council's development plan and the National Planning Policy Framework (NPPF) to retain and support existing businesses and achieve growth in the local economy. It would also accord with policies in the NPPF to support healthy lifestyles and promote social interaction. These noteworthy benefits arising from the development applied for would be relatively modest so these considerations have moderate weight in support of the appeals.

38. The appellant has greatly improved the internal and external structure and fabric of St Agnes Church, including mainly high quality materials and fit-out. This has likely required considerable investment and endeavour. Including the constituent ventilation grilles and handrail, this significant conservation achievement overall has received independent endorsement⁵. Albeit commendable, this recognition does not overcome the planning harm set out in the main issues above.
39. The Council's decisions to refuse planning permission for the reasons that it did were by resolution of its Planning Committee to reject officer recommendations to grant planning permission. This was after earlier deferred consideration of both applications by Councillors and with little or no notice of all the objections ultimately set out in the Council's reasons for refusal. I appreciate that the appellant was disappointed with these outcomes. But in these circumstances it is unsurprising and of necessity that the Council's appeal statements depart from some assessment set out in its officer reports. I have considered the development applied for in each appeal on its individual planning merits and determined the appeals on the evidence before me, informed by my site visit.

Planning Balance and Conclusion

40. There is conflict with development plan policies in respect of the character and appearance of a noteworthy building and essential living conditions of some residents. These important considerations respectively have significant weight and substantial weight against each appeal. The public benefits of the development in each appeal do not, therefore, outweigh the harm. Other material considerations, including relevant provisions of the NPPF, do not indicate that the appeals should be decided other than in accordance with the development plan. Consequently, for the reasons given above both appeals do not succeed.

Robin Buchanan

INSPECTOR

⁵ Sussex Heritage Trust Award 2022