



Appeal Decisions

Site visit made on 3 February 2025

by **R J Redford MTCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 March 2025

Appeal A Ref: APP/Q1445/W/24/3347463

13B Chichester Terrace, Brighton BN2 1FG

- 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 Peter Buck-Bouchard against the decision of Brighton and Hove City Council.
 - The application Ref is BH2023/03215.
 - The development proposed is described as “alterations to sub-divide the existing flat to create an additional flat (similar to that which existed prior to the current consent for amalgamation granted 1991/2)”.
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Appeal B Ref: APP/Q1445/Y/24/3347796

13B Chichester Terrace, Brighton BN2 1FG

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Mr Peter Buck-Bouchard against the decision of Brighton and Hove City Council.
 - The application Ref is BH2023/03216.
 - The works proposed are described as “Alterations to sub-divide the existing flat to create an additional flat (similar to that which existed prior to the current consent for amalgamation granted 1991/2)”.
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Decision

Appeal A Ref: APP/Q1445/W/24/3347463

1. The appeal is dismissed.

Appeal B Ref: APP/Q1445/Y/24/3347796

2. The appeal is dismissed and listed building consent is refused.

Preliminary Matters

3. It is noted that the appellant has submitted Plan 3B as part of their appeal submission. This plan was submitted to the Council during the application process but was not accepted as it was not considered to overcome its concerns in relation to living conditions. However, as the Council is aware of Plan 3B, had opportunity to consider it and it has been available through the entire appeal procedure, and the proposed alterations would not alter that proposed but make a small alteration to the internal layout of the rear flat. I am therefore satisfied substituting Plan 3A with Plan 3B would not constitute a fundamental change nor be prejudicial to any other parties. The appellant has also submitted SK1A Rev A20241020 which shows the differing lease and ownership elements of the appeal site. This does not

materially alter the proposal but seeks to clarify a point on contention, so has also been considered within this decision.

Main Issues

4. The main issues are whether the proposal:

- would preserve a Grade I listed building known as “Numbers 1-14 and Chichester House and Attached Railings” (Ref: 1380256) (the LB), and any of the features of special architectural or historic interest that it possesses; and the extent to which it would preserve or enhance the character or appearance of the Kemp Town Conservation Area (the CA); and
- adequate living conditions for future occupiers with specific regard to internal space of the proposed rear dwelling, and outlook and access to natural light for the proposed front dwelling.

Reasons

Heritage assets

5. As the proposal is in a conservation area and relates to a listed building, special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act) has been had.
6. The appeal site is the lower ground floor of 13 Chichester Terrace and is currently a singular flat known as 13B. No 13 as a whole forms part of the LB and its significance relates to its ornate design and historic relevance to the Regency planned estate known now as Kemp Town. Which, in its own right, has been designated a conservation area, the CA.
7. The Kemp Town Conservation Area Study and Enhancement Plan (SEP) goes into some detail as to the history of the CA. It notes that the LB forms part of the originally envisaged layout of Kemp Town, and as a grand terrace was built over a period of time. No 13 was completed a few years after 1830 and due to the length of time it took the LB to be built, there is a variance across the individual properties from the original design. However, this in itself further adds to its significance and emphasises the speculative nature of how Kemp Town was developed.
8. The SEP goes on to describe the interiors of the Grade I buildings within the CA, noting that the kitchen would have been at the rear of the basement with servant's quarters occupying the remainder of the level. However, on visiting the site it is evident that there have been multiple alterations to 13B including the previous subdivision into 2 separate flats and subsequent re-amalgamation.
9. Taking this into account, therefore, elements within 13B that provide information to its original layout and fabric contribute to the special architectural and historic interest of No 13 as part of the LB. The LB as one of the originally planned and completed elements of the Kemp Town, and in combination with its continued residential use forms an integral and significant part of the CA.
10. The submitted plans and heritage statement provide information limited to the existing and proposed layouts and a general history of the LB. It is appreciated that the appellant considers their submission to be extensive compared to the submission they made in 1991 when they gained approval to convert the 2

basement flats into the current dwelling 13B. However, Paragraph 207 of the Framework requires the level of detail at application to be proportionate to the assets' importance. It states that as a minimum the relevant historic environment record (HER) should be consulted and the heritage assets assessed using appropriate expertise where necessary.

11. The submission does not refer to the relevant HER nor how the proposal would impact the significance of the LB. As the LB is Grade I, and therefore considered a building of exceptional interest, it is imperative to understand any effect the proposal may have on the significance of the building as an irreplaceable heritage asset. The submitted information does not show the phasing of the changes which have occurred in 13B nor what can be considered original fabric or more modern interventions. Accordingly, it has not been clearly shown how the proposal would affect the significance of the LB and whether it would preserve it or not.
12. Nevertheless, from the information that has been provided, it is evident the basement space would have originally been built as a collection of rooms within an existing singular dwelling. The previous subdivision into 2 flats would have concealed the original layout of the basement and the subsequent 1991 creation of 13B would have better related to that original layout. Therefore, the re-division of 13B would harm this element of the LBs historic interest. So, the proposal would fail to comply with the Act and Framework, and City Plan Part 2 (CP2) Policy DM27 and City Plan Part One Policy CP15, insofar as they seek to protect listed buildings as part of the city's historic environment.
13. The proposal would largely require internal works to 13B, with the only obvious outward alteration being the use of the secondary access onto Rock Grove becoming the primary access for the proposed rear flat (hereon known as Flat 1). However, there are numerous similar entrances along Rock Grove from the surrounding building and so such an alteration is unlikely to cause harm to the character and appearance of the CA. Consequently, the proposal could comply with CP2 Policy DM26, which seeks to protect conservation areas.
14. Nevertheless Paragraph 212 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the heritage asset's conservation. Therefore, the lack of harm to the CA, would not outweigh the harm to the LB.
15. It is acknowledged that the appellant considers the proposal to require very limited alterations, and that the LB has been considerably altered already. However, this means that the retention of any remaining fabric or features of significance is even more imperative. Accordingly, and considering the LB as a whole, the proposal would cause less than substantial harm to the LB.
16. When less than substantial harm has been identified, paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing the LB's optimal viable use, and this is undertaken in the below Balance and Conclusion section.
17. It is noted that the Council have also referred to CP2 Policy DM29 which deals with the setting of heritage assets, and it is appreciated that there are other listed buildings in the area. However, due to the scale of that proposed in relation to the size of the LB and the lack of harm to the CA, in this instance, this policy is not determinative.

Living conditions

18. The proposal would constitute a residential conversion and CS2 Policy DM3 sets out 3 criteria which must be met. The third of which requires the proposal to comply with the requirements of CS2 Policy DM1. CS2 Policy DM1 requires, amongst other things, all residential units to meet the nationally described space standards (NDSS)¹. This sets out the minimum floor areas and dimensions considered acceptable for new dwellings. As the proposal would in effect create 2 new dwellings, it is therefore necessary for them to meet the NDSS. The NDSS requirements salient to this proposal are:
- the minimum gross internal floor area (MGIFA) of 61sqm for a 2-bedroom, 3- person, single storey dwelling;
 - that any dwelling for 2 or more people should have at least one double (or twin) bedroom; and
 - that at least one double (or twin) bedroom should have a MGIFA of 11.5sqm and be at least 2.75m wide.
19. The main parties agree that the proposed 2-bedroom front dwelling (hereon known as Flat 3) would meet the NDSS requirements, and there is nothing before me to conclude otherwise.
20. Flat 1 would also be 2-bedroomed. Although there are discrepancies between the main parties in terms of measure in the proposed 2 bedrooms, it is evident from both parties' measurements that the smaller bedroom adjacent to the cellar could only be considered to provide a single bedspace. Therefore, for the proposal to meet the NDSS it would be necessary for the other bedroom to provide two bedspaces. As such Flat 1, as a minimum must be considered a 2-bedroom 3- person, single storey dwelling.
21. The Council has identified Flat 1 as having a gross internal floor area (GIFA) as 51.3sqm. Taking account of the floor areas identified on Plan 3B, the appellant considers the GIFA to be slightly greater at around 52sqm, with an additional 18.65sqm attributed to the cellar space. Although the cellar would provide a unique storage opportunity and may conceivably be used for ancillary purposes (as labelled on Plan 3B) it is highly unlikely to provide adequate day to day living space. Therefore, in my mind, would not fall into the definition of GIFA as set out in paragraph 8 of the NDSS. Consequently Flat 1 would fall substantially short of the MGIFA.
22. Flat 1's proposed double (or twin) bedroom, when considering Plan 3B would meet the 11.5sqm NDSS requirement. However, due to the irregular shape of that proposed bedroom it would predominantly be 2.56m or narrower, so would not meet the 2.75m NDSS requirement.
23. That there is no provision within the NDSS for 2-bedroom, 2-person dwellings is acknowledged. However, within the NDSS the use of the terms 'bedroom' and 'people' (or 'bedspaces') is a means of classification for assessment purposes and to allow categorisation of space requirements. It does not imply actual occupancy.

¹ As set out within the Technical Housing Standards – Nationally Described Space Standards document, written by the Department of Communities and Local Government and published on 25 March 2015

Taking this into account along with the salient requirements of the NDSS, a dwelling with 2 single bedrooms would not therefore comply.

24. It is acknowledged that 13B was previously 2 dwellings, but this was over 30 years ago, and it is necessary to consider the proposal in accordance with the current development plan.
25. The appellant proposes that the smaller bedroom of Flat 1 could be re-designated, that market factors would denote whether Flat 1 could provide suitable accommodation, and that the LB itself prohibits extensive works. Nonetheless, I have a duty to determine the proposal before me (which specifies Flat 1 as a 2-bedroom dwelling) and this must be against the development plan not market factors. That 13B is part of a listed building should form part of any potential subdivision considerations and is not justification for suboptimal living spaces.
26. Accordingly, Flat 1 would fail to meet the NDSS and so not provide adequate internal space for future occupants.
27. Although 13B is situated on a lower ground level is has reasonable access to light and a relatively open aspect to the front. In conjunction with a central lightwell and enclosed patio to the rear, occupants of 13B have reasonable access to natural light throughout. It is however noted that the rooms with windows only into the central lightwell are obviously darker than the rest of the dwelling.
28. The proposed subdivision would retain access to the central lightwell for the bedrooms of Flat 3. These bedrooms would therefore have similar access to natural light as the current bedrooms. Flat 3 would also retain the existing outlook to the front. As such, the proposal would not reduce the outlook and access to natural light below existing levels and so retain adequate living conditions for future occupants of Flat 3.
29. However, this does not overcome the considerably harm the identified lack of internal space would have on the living conditions of future occupants of Flat 1. The proposal would, therefore, fail to comply with CP2 Policies DM1 and DM3c).

Other Matters

30. That no adverse comments were received from various statutory consultees including Historic England, does not mean they endorse the scheme.
31. It is noted that there is a dispute between the appellant and interested parties in relation to ownership as well as the leases which pertain specifically to the appeal site, that the previous 2 dwelling iteration brought in income to the Council and that a dismissal could financially disadvantage the appellant. However, these matters do not affect the planning merits of the cases nor prohibit my ability to determine these appeals.
32. That the Heritage Officer did not undertake a site visit, and the Council failed to determine the Appeal B scheme is unfortunate, but again does not alter the planning merits of the cases before me.

Balance and Conclusion

33. Returning to the Framework's Paragraph 215 balance, as the appeal site has been in use as a residential dwelling for a considerable time in its current form, the

optimal viable use has already been secured and is not dependent on the proposal. The proposal would provide 1 additional dwelling, and the Framework seeks to boost significantly the supply of housing and recognises the importance of small sites in meeting the housing requirement of an area. Along with contributing to the Council's 5-year housing land supply, and that the provision of 2 smaller flats may be more appropriate to the local demographic instead of a singular 4-bedroom flat, would constitute the benefits of the scheme and attract moderate weight.

34. However, due to the lack of clarity as to the precise impact the proposal would have on the LB and requiring a precautionary approach due to the irrevocable damage loss of fabric or historic context could have, I am not satisfied in this instance that the limited benefit of providing an additional undersized dwelling (as set out in the second main issue) would be sufficient to outweigh the harm caused, harm that must attract considerable weight. The proposal would therefore fail to comply with the Act and Framework.
35. The Council has found a lack of harm in relation to the living conditions of neighbouring occupants and transport matters, and in the main issues a lack of harm has been found in relation to the impact on the CA and the future occupants of proposed Flat 3. However, by definition, a lack of harm is incapable of weighing for or against the proposal.
36. Paragraph 11 (d) of the Framework indicates that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposal. The application of heritage policy provides that to be the case here. As such, the proposal would not be the sustainable development for which Paragraph 11 of the Framework indicates a presumption in favour.
37. Consequently, for the reasons given above, the proposal would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. Appeal A and Appeal B are, therefore, dismissed.

RJ Redford

INSPECTOR