



Appeal Decisions

Site visit made on 13 January 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 June 2026

Appeal A Ref: APP/Q1445/W/25/3374437

49 Rock Street, Brighton, BN2 1NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Jonathan Hiscock against Brighton & Hove City Council.
 - The application Ref is BH2025/01470.
 - The development proposed is conversion into habitable space and waterproofing of below pavement vaults with installation of new doors and windows..
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Appeal B Ref: APP/Q1445/Y/25/3374433

49 Rock Street, Brighton, BN2 1NF

- 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 Jonathan Hiscock against Brighton & Hove City Council.
 - The application Ref is BH2025/01471.
 - The works proposed are conversion into habitable space and waterproofing of below pavement vaults with installation of new doors and windows..
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Decisions

Appeal A

1. The appeal is dismissed, and planning permission is refused for the conversion into habitable space and the waterproofing of below pavement vaults, with the installation of new doors and windows

Appeal B

2. The appeal is dismissed and listed building consent is refused for the conversion into habitable space and the waterproofing of below pavement vaults, with the installation of new doors and windows

Applications for costs

3. An application for costs has been made by Mr Jonathan Hiscock against Brighton & Hove City Council. This application is the subject of a separate decision.

The Property

4. No 49 Rock Street is a 19th century terraced property to the rear of the Grade I listed, 6 Sussex Square which forms part of a regency architectural development comprising town houses. It is similarly Grade I listed.

5. The appeal property itself is a self-contained residential flat formed of two-storeys, a ground floor and basement, accessed by its front entrance off Rock Street. The ground floor mainly comprises a substantial kitchen/lounge diner, and the basement below, two bedrooms, one which opens out onto an open courtyard which, in turn, gives access to four separate vaults below the outside footway. There is also access from street level to the courtyard via the neighbouring property's courtyard steps and a through passageway from its own courtyard.

Preliminary Matter

6. As the two appeals concern the same development, albeit under different but complementary legislation, I shall deal with both appeals together in my reasoning. In reaching my decision I have had regard to the statutory duties under sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The Proposal

7. It is proposed that all four vaults be converted into habitable floorspace so as to extend the flat's living accommodation. The proposed layout would, in accordance with the annotations, allow for an additional bedroom, a new study/bedroom, a dressing room, and an ensuite bathroom, with the installation of timber-framed glazed doors to allow for natural light entry. A metal-framed glazed screen and double doors would also be installed to the underside of the entrance bridge below the ground floor entrance point.
8. The existing internal vaulted patio areas would be retained, but the masonry wall, which the appellant says is not original, would be replaced with a metal framed glazed screen and double doors to provide additional light and air flow to this space. The works, it is said, would include the replacement of non-original masonry, damp-proofing and the installation of timber-sash windows.
9. The appellant says that the internal layout of either the flat or the vaults would not be altered other than reinstating existing openings between the vaults and into the courtyard. In this particular instance damp-proofing works are considered necessary to make the floorspace habitable.

Main Issue

10. The main issue is whether the proposed works would preserve this Grade I listed building, and whether they would preserve or enhance the character or appearance Conservation Area, within which it falls.

Reasons

Special interest and significance

11. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCAA) requires the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
12. The property also falls within the Kemp Town Conservation Area. The Council's Kemp Town Conservation Area Study and Enhancement Plan refers to the striking layout and elegant neo-classical facades of Sussex Square, amongst others, which

comprise Brighton's most grand and important Regency group. The study says that the Grade I listed buildings within have an individual symmetry and clarity of form upon which the graceful and imposing appearance of the estate depends.

13. Paragraph 212 of the National Planning Policy Framework (the Framework) states that, when considering the significance of a designated heritage asset, great weight should be given to that asset's conservation. Significance can be harmed or lost through alteration of the heritage asset and, in instances where harm is identified, the degree of such is a matter for the decision maker's assessment. Further, this must be given considerable weight, and requires convincing justification.
14. Historically, the vaults performed a utilitarian function, and their ceiling heights are characteristically low. Attempts to increase the vaults' status risks causing harm to their character and significance. Listed building consent exists to protect the special architectural and historic interest of the building. This does not only mean how it looks, but how it is constructed and how it performs.

Effect on the listed building

15. Although the vaults cannot be seen from the street they are an integral part of the historic integrity. The proposal would involve them being damp-proofed to allow for their habitable use and, having witnessed their current physical state, I acknowledge that they likely require some attention in this regard. However, that in itself, does not justify the incorporation of additional habitable floorspace.
16. It is proposed that the damp-proofing would be by way of a drained cavity membrane installation, known as the Wykamol system, that has apparently been previously used elsewhere, locally. The appellant says, that this would have a neutral impact on the historic building's fabric.
17. It is indicated that any moisture that seeps out of the existing masonry walls from the earth behind is drained away along the membrane's inner face. Such a system would allow for the masonry to breathe with a drainage channel collecting any moisture that comes through the wall and drains it away. Further, the appellant says this system is fully reversible. That said, it is generally accepted that damp in listed buildings is rarely solved by products. Instead, it is addressed by a full understanding of the building at issue, its materials and history. In attempting to improve, repair and maintain vaults and reduce damp levels conservation best practice of minimal intervention and involving the use of appropriate permeable traditional materials is recommended
18. Although It is claimed that the original fabric of the vaults would remain intact and preserved by the membrane system, eliminating the risk of water damage, whilst making the spaces viable for habitation, it is accepted that the vault's conversion would reduce their volume marginally to allow for the membrane's installation. Most such buildings, though, were never designed to be water-proofed in the modern sense. Nonetheless, damp-proofing such buildings can require structural changes, necessitating that the ground-levels be lowered. For instance, old buildings were purposely built with permeable, breathable masonry such as timber frames, stone and lime mortar, designed to let moisture evaporate naturally.
19. Given the above it would be expected that details be submitted as to the moisture source identification, a method statement and system design and, on the basis of the above, a heritage impact assessment. However, I note that submission has not

included any structural survey, nor any full detailed appropriate methodology to illustrate the vaults' construction and the extent of the full scope of the works required to achieve the intended alterations.

Effect on the conservation area

20. As mentioned, the property is within the Kemp Town Conservation Area. In accordance with my statutory duty under s72(1) of the LBCAA I have paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Here, the individual symmetry and clarity of form evident externally would not necessarily be affected by this proposal, and I the works would have a neutral effect on the area, thereby preserving its character and appearance.

Other considerations

21. The Council acknowledges that a site visit did not take place to assess the applications made, and the appellant is of the view that this delayed their determination. Indeed, it is the case that the appeals were made on the basis of the applications' non-determination following the expiry of the prescribed period.
22. Delays are regrettable, especially as the appellant says that discussions did take place with the Council's conservation officer as to what would be considered as an appropriate method of damp-proofing. That, though, is not the whole story in the event that certain structural alterations could be seen as necessary from the findings of a requisite structural survey and a defined methodology. The Grade I listing makes this all the more important.

Public Benefits and Planning Balance

23. Giving great weight to the asset's conservation is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm. Echoing that approach, paragraph 213 advises that any harm, or loss of the significance of a designated heritage asset, including from its alteration, should require clear and convincing justification.
24. The appellant's representations are largely based around works that were previously approved to other vaults in listed building in the Brighton area. These cases do not constitute precedent as each will have their own individual circumstances with material factors peculiar to each building. It is clear, though, that Brighton City Council do not have an 'in principle' objection to the conversion of vaults to habitable use.
25. Such vaults, though, were never meant to be used for living purposes as they only performed a storage function in accordance with their positioning and design. Their limited floorspace, relatively low ceilings and the single aspects with consequential restrictions in natural light entry and ventilation tends to bring into question their suitability in this instance. Certainly, I am not properly convinced that this current proposal has been justified; more so appearing as a reminder to the Council that there are other examples of such within the local area.
26. Direct parallels are not easily drawn between sites, although I acknowledge that there are some similarities. To summarise, the case of Walsingham Cottage involved the conversion of a Grade I listed building's vaults into habitable space, for which the Council granted both planning permission and listed building consent

(LBC). Listed building consent was also granted on appeal for the conversion of vaults to habitable/storage spaces at a basement flat at Royal Court, 8 Kings Gardens, and at 10b Lewes Crescent the permitted works, involving the tanking and conversion of two brick vaults, related to the reconfiguration of an existing one-bed flat. Finally, the LBC at 41 Rock Grove also involved internal alterations to the flat's layout and the installation of doors to the courtyard. Conditions required further details; one of which related to the proposed damp-proofing.

27. It is not for me to revisit these proposals nor to speculate as to the degree of detailed information that might have accompanied these applications and which I consider is reasonably necessary to support the applications made.
28. The advice within the Framework is that, firstly, it needs to be identified whether there would be harm, and the second stage is whether public benefits weigh against this harm, including securing the asset's optimum viable use as a factor against which the considered 'less than substantial harm' has to be weighed. In other words, the primary objective and starting point is to preserve the building's special interest, and a robust argument is required for any departure from that principle.
29. The planning practice guidance also refers to heritage benefits which may include securing the optimum viable use of an asset in support of its long term conservation. This balances economic viability with heritage protection. It can involve requiring compromises to secure the building's future and is a key concept in heritage planning to keep significant buildings in use and prevent decay.
30. In this particular instance, although the appellant is of the view that the proposal would represent a better use of the space available, along with an improvement in the appearance of the courtyard, these benefits represent more private aspirations than public benefits. Also, there is nothing compelling before me to suggest that the flat needs to accommodate the additional floorspace for it to effectively function as a dwelling. Accordingly, the building's optimum viable use would not be reasonably affected by the proposal.
31. Expectations for the use of vaults should be realistic and consistent with their original function and trying to reduce damp to a level consistent with residential occupation could cause considerable harm. Although I am not of the view that there would be any significant harm to the Conservation Area there would potentially be adverse effects from the intended works as to the special interest of the listed building, despite whether the appellant might consider these as minor in the context of the building as a whole.

Conclusions

32. I have found that there are no significant public benefits which would arise to sufficiently outweigh the considerable importance and weight I attach to the resultant harm identified to the significance of the designated heritage asset. Accordingly, I am of the opinion that this listed building's conservation could be compromised to an unacceptable degree.
33. In the absence of the detailed information that I have highlighted, and which I consider is reasonably required to support both the applications made, I must conclude for the above reasons that the building would not necessarily be conserved in a manner appropriate to its significance.

34. The proposed works are thereby contrary to the aims and requirements of policy CP15 of the Brighton and Hove City Plan Part 1 and policy DM27 of the Brighton and Hove City Plan Part 2.

35. Accordingly, both appeals are dismissed.

TC King

INSPECTOR