



Appeal Decision

Site visit made on 9 May 2018

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 June 2018

Appeal Ref: APP/Q1445/D/18/3196655

31 Upper Gardner Street, Brighton BN1 4AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Thomas Hughes against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/03039, dated 7 September 2017, was refused by notice dated 16 January 2018.
 - The development proposed is described as the "Replacement of existing asphalt flat roof and the addition of decking above the kitchen and bathroom at the back of the property. Obscured railings will be added around the edge of the flat roof and a narrow staircase built to allow access from a small backyard. There are already three existing roof terraces in the area that overlook the back to back gardens. This addition would increase outdoor space for the property threefold as well as increasing green space in the North Laine and encouraging bird life."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are firstly, the effects of the proposed development on the living conditions of the occupants of 30 and 32 Upper Gardner Street, and 28 and 29 Queen's Gardens in terms of privacy, noise and disturbance; and secondly, whether the proposed development would preserve or enhance the character or appearance of the North Laine Conservation Area.

Reasons

Site, surroundings and proposed development

3. This appeal relates to a two-storey mid-terraced property located in the North Laine Conservation Area, close to the centre of Brighton a locale with a mixture of residential and commercial uses. The building line and pattern of structural openings of the front of the appeal property and its host terrace create a strong sense of rhythm and enclosure in these public facing aspects. The Conservation Area's significance resides, to some degree, in its consistency of facing materials, the scale of its buildings and the resultant intimate streetscene of thoroughfares such as Upper Gardner Street.
4. To the rear of Upper Gardner Street, incremental development is commonplace including single-storey extensions infilling much of some of the rear gardens, such as the one at the appeal property. Long, single-storey structures are also

present between the rear gardens of Upper Gardner Street, and those of Queen's Gardens. Taken together with alterations at upper levels inter-visible with the appeal property, including roof lights, Juliet balconies and roof terraces, these incremental developments impart a congested and haphazard character to the rear aspects, which are a stark contrast to the order and architectural integrity of the fronts.

5. The appeal scheme as described above, seeks to install railings and decking on the flat roof of the existing single-storey element to No 31's rear. A staircase would be constructed in the yard to access the flat roof. These measures would facilitate its use as a roof terrace.

Living Conditions

6. The flat roof at the appeal property, due to its width, has a close relationship to upper floor rooms and their windows in 30 and 32 Upper Gardner Street. In allowing and encouraging the use of the flat roof as amenity space, the proposed development would due to its depth from the rear elevation, allow a degree of overlooking to these adjacent first floor windows that would materially deplete the privacy available, and reasonably expected, in those rooms. Furthermore due to the size of the roof, and its potential to accommodate a number of people, the appeal scheme would be likely to bring the sounds normally experienced at ground level much closer to these first floor rooms- the disturbance caused as a result, would add to its overall harm to the amenity of the occupants of the adjoining properties. Consequently, I consider that the proposed development would clearly cause harm to the living conditions of the occupants of Nos 30 and 32 in these respects.
7. Moreover, the use of the flat roof would allow direct and penetrative views into the facing first-floor habitable room windows of 28 and 29 Queens Gardens, which are not obscured by intervening structures. As the level of the flat roof is above that of the floor of No 31's bedroom to which it is adjacent, the proposed terrace's views into these facing rooms would be materially more direct than the views available from that bedroom's windows. The terrace would, as a consequence, materially reduce the privacy of the occupants of Nos 28 and 29 and this would cause harm to their living conditions. Implementation of the railings and border planting would not overcome the harmful effects of the proposed use in these respects.
8. Whilst I saw the other roof terraces referred to me by the appellant during my visit, these were in a perpendicular relationship to the rear of the terraces, and at a higher level than the flat roof of the appeal property. Consequently, whilst they do cause some overlooking of gardens, they do not have the directness of view into, or intimate relationship with, adjacent habitable room windows at first floor that a roof terrace at the appeal property would result in. Whereas I saw Juliet balconies in the area, these do not provide the amount of space that is available on the flat roof of the appeal property, and therefore do not facilitate an intensity of use, or a depth of views into surrounding windows equivalent to those that would arise from the appeal proposal. Consequently, these other developments do not provide precedents for the appeal scheme due to the materially more harmful effects it would cause.
9. I note the appellant's comments that the appeal property's flat roof is already used as amenity space. However, the proposed development would formalise

and facilitate this arrangement and this would be likely to exacerbate its use, and would as a consequence intensify the effects that I have described.

10. For these reasons, I conclude on this main issue that the proposed development would cause clear and considerable harm to the living conditions of the occupants of 30 and 32 Upper Gardener Street and 28 and 29 Queen's Gardens. As a result, the proposed development would conflict with Policies QD27 and QD14 of Brighton and Hove's Local Plan (adopted July 2005) (the Local Plan). Taken together, and amongst other matters, these policies seek to ensure that alterations to existing buildings do not result in a loss of amenity including as a result of significant noise, disturbance or loss of privacy.

The Conservation Area

11. The proposed development would result in very limited additions to the appeal building, and I saw elsewhere within its immediate surroundings that similar materials and treatments had been employed within roof terraces. Moreover, the character of the rear of the terrace is one of incremental development and accretions to its constituent buildings within which the appeal proposal would not look out of place. Consequently, mindful of the duty arising from section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude on this main issue that the proposed development would preserve the character and appearance of the Conservation Area. For these reasons too, I detect no harm to the Conservation Area's significance, and find no conflict with Policies HE6 and QD14 of the Local Plan, or the National Planning Policy Framework insofar as they seek, amongst other matters, to ensure that alterations to existing buildings use building materials and finishes sympathetic to the area and avoid harmful impacts to the townscape, and that heritage assets are conserved in a manner appropriate to their significance.

Other Matters

12. The appeal scheme would increase the amount of amenity space at the property, and allow additional space for planting. This would have benefits for the occupants of the appeal property, and through the potential to encourage bird life, the biodiversity of the area. This latter aspect would attract some support from the environmental sustainability policies of the development plan. Nevertheless, due to the modest space achieved in wildlife terms, and the essentially private nature of the benefit of the expanded amount of amenity space, these matters only weigh modestly in favour of the appeal scheme.
13. I note that the flat roof is already used from time-to-time as informal amenity space, and that the proposed development would improve its safety in supplying railings and improved access via a stairway, and through making structural improvements to the roof. Be that as it may, in the light of my conclusions on the harmful effects of the more formal use that the appeal scheme would facilitate, I consider that these matters add little weight in the appeal scheme's favour.
14. The proposed development would entail the replacement of the flat roof, and this would include enhanced insulation. Whilst this would help to meet the Council's objectives in relation to environmental efficiency, it has not been demonstrated that these measures are dependent on the aspects of the proposal that would facilitate its use as amenity space. Consequently, this

aspect of the scheme weighs in favour of the proposed development to only the most minimal degree.

15. I note the appellant's references to a lack of objections from the occupants of some adjacent properties. However, this does not establish that the development would avoid harmful effects. Consequently, this consideration carries no weight in favour of the appeal scheme.

Planning Balance and Conclusion

16. I have found that the proposed development would preserve the character and appearance of the Conservation Area. However, this is merely indicative of an absence of harm in these regards rather than a positive benefit of the appeal scheme, and consequently has only a neutral effect on the overall planning balance. For the reasons set out above the other matters advanced in favour of the appeal scheme only carry limited weight. Consequently, the harm that the appeal scheme would cause to the living conditions of the occupants of adjacent properties, a matter which attracts considerable weight, clearly tips the planning balance against the appeal scheme's approval.
17. As a result, no material considerations have been advanced in favour of the appeal scheme of a sufficient weight to justify a decision other than in accordance with the development plan, with which, in terms of the above-cited policies it would clearly conflict. Accordingly, for the above reasons, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR