



Appeal Decisions

Site visit made on 20 February 2018

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State

Decision date: 5 March 2018

Appeal A: APP/Q1445/W/17/3189822 **87 St James's Street, Brighton BN2 1TP**

- 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 I Gunsel against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/01672, dated 17 May 2017, was refused by the Council by notice dated 12 July 2017.
 - The development proposed is retrospective application for the internal alterations to a Grade II Listed Building and subdivision to create a self-contained studio flat.
-

Appeal B: APP/Q1445/Y/17/3189605 **87 St James's Street, Brighton BN2 1TP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr I Gunsel against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/01673, dated 17 May 2017, was refused by the Council by notice dated 12 July 2017.
 - The works proposed are retrospective application for the internal alterations to a Grade II Listed Building and subdivision to create a self-contained studio flat.
-

Decisions

1. I dismiss both appeals.

Main Issues

2. These are;
 - In both Appeal A and Appeal B, the effect of the works on the architectural or historic significance of the listed building and its setting within the East Cliff Conservation Area.
 - In Appeal A only, the effect of the works on the living conditions of prospective occupiers with particular regard to the size of the Studio Flat.

Reasons

Listed Building

3. The building is listed at Grade II and sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of

- the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
4. Paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be.
 5. Policy HO9 of the Brighton & Hove Local Plan provides for residential conversions provided, at part (f) that if the building is listed, the proposal preserves the character of the listed building. Policy HE1 states that proposals involving the alteration, extension, or change of use of a listed building will only be permitted where the proposal would not have any adverse effect on the architectural and historic character or appearance of the interior, among other considerations. Heritage is the subject of Policy CP15 of the Brighton & Hove City Plan Part One, the city's historic environment will be conserved and enhanced in accordance with its identified significance, giving the greatest weight to designated heritage assets.
 6. Policy HO9(f) is engaged with regard to the planning appeal and the first floor only as that is a residential conversion into two flats, but Policies HE1 and CP15 are material considerations in the listed building consent appeal as a whole.
 7. Supplementary Planning Guidance Note 11 '*Listed Building Interiors*' makes clear the importance of plan-form with alterations being expected to respect the original plan form which must remain 'readable'.
 8. The reason for refusal of listed building consent concerns what is described as '*extensive internal changes to the planform of the Grade II listed building which includes the unsympathetic division of original spaces causing harm to the volume and proportions of the historic interior*' and clearly concerns the entirety of the works shown on the drawings on each of the first, second and third floors, the latter two being confined to the sub-division of a room on the St James's Street corner. In the planning application refusal notice, the reference is to '*the works undertaken in creating the division of the first floor into two units involved extensive internal changes to the planform of the Grade II listed building*' and with regard to Policy HO9(f).
 9. The drawings are somewhat sketchy with regard to the access stair and landing arrangements, although it is fair to note that the drawings do not purport to show areas that apparently were not surveyed. It was nevertheless clear at the site inspection where the front doors of each flat are and those parts of the stair and landings that are common areas.
 10. Of more concern is the statement from the Council that further works would be required to ensure a protected route in case of fire from bedrooms to the protected shaft of the staircase, and this appears to apply to Flat 1, Flat 2 and Flat 3, where the newly formed sleeping accommodation is beyond the living room/kitchen and behind a non-glazed door. This would require occupiers to pass through an area of fire risk even if they are immediately aware of the fire. In the absence of evidence of other fire precaution measures, there is doubt as to whether the arrangement seen at the site inspection is the final one.
 11. Another failure of the drawings is a lack of explanation as to the works carried out to increase the headroom in the Studio Flat, where the soffite rises. Whilst

to an extent the low-level bathroom retains the original shape and an appreciation of the original volume of the room, the work to the soffit has eroded that perception of this once having been a room and has caused harm by introducing a discordant and confusing feature.

12. New partition walls have been inserted in what was previously a single front room, to form a living room and a bedroom to Flat 1, a living room and an additional bedroom to Flat 2, and a living room and 2 additional bedrooms to Flat 3. The walls respect the arrangement of windows and the fact that lights and activity may now appear separated into various rooms when seen from view points on St James's Street and Margaret Street would not register as being unusual and the works have no adverse effect on the external significance of the listed building or the character and appearance of the East Cliff Conservation Area.
13. However, the new partition walls do not respect the arrangement of the chimney breast on each floor and the fact that this is a redundant feature of the rooms does not diminish the effect so as to make this work acceptable. It is acknowledged that the new partitions could be removable, that the effect on the fabric of the building could be minimal and that the effect on the proportions of the rooms may well be reversible. But, care should be taken to retain the 'readability' of the original plan form as stated in the Supplementary Planning Document, and failing to present the whole of the chimney breast frustrates the appreciation of the original form of the building and the hierarchy of rooms, as does running new picture rails or cornices around new rooms.
14. The sub-division of the front rooms and the works to the soffit of the Studio Flat have caused harm to the architectural and historic significance of the building and fail to accord with Policies HO9(f), HE1 and CP15, or the aims of the Supplementary Planning Document. The statutory tests in section 16(2) and 66(1) of the 1990 Act would not be met.
15. The level of that harm is however 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. That will be considered in the planning and listed building balance which follows the second main issue.

Living Conditions

16. Local Plan Policy QD27 states that Planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.
17. The appellant draws attention to the use of the 'and' linking 'material nuisance' and 'loss of amenity' stating that this requires both to be compromised. It is the case that 'and/or' is deliberately used later in the policy to provide for either one or both types of users to be affected. The Council refer to the supporting text which is clearer as to the intent. However, a material nuisance in planning terms is not necessarily the same as a statutory nuisance, and the full sentence applies to the proposed occupiers. In any event paragraph 56 of the Framework states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable

development, is indivisible from good planning, and should contribute positively to making places better for people. The provision of a good standard of living accommodation should be the aim of good planning.

18. The Council provide a commentary on floor areas relative to the Government's 'Technical Housing Standards – Nationally Described Space Standard' but this refers to new dwellings and the Council do not have an adopted policy in this respect. The Standard is however a useful benchmark, and with regard to the Studio Flat on the first floor, which is the one objected to in the reason for refusal, the total of the main floor and the mezzanine is stated to be 26m² as opposed to the Standard's area of 37m² for a 1 person 1 bed-space flat. The Council has taken a flexible approach to minor failings in another flat, but this is a significant reduction.
19. The figure in the standard is 'gross internal floor area' and in an open plan rather than a cellular arrangement, all space is useable. It is appropriate therefore to consider the quality of the provision. The flat is self-contained and appears to have a serviceable and useable bathroom, with a bath and not just a shower, however strictly that would increase the requirement to 39m². Be that as it may, the all-in-one kitchen unit appears well engineered and able to provide the basic level of cooking, storage and preparation/washing-up that would be expected of a small flat in a town centre location, close to shops and food outlets.
20. The living space would provide adequate room for the purpose, and is well-lit with a large window that is not shown on the drawings, but is an attractive feature of the flat and makes it appear larger than its dimensions may suggest. The bathroom, kitchen and living area is of a high quality and does not appear cramped.
21. The bedroom arrangements however are awkward to access and cramped, although it is noted that a small double bed is in place which does not help circulation. In fact, there is no space either side of that size of bed and access would, realistically, have to be over the foot-rail. The stairs are narrow and the headroom very limited, although the Standard does provide for 2.3m requirement to be only over 75% of the floor area, and that appears to have been met with a higher level generally adding to the feeling of light and air in the main part of the flat.
22. In conclusion, whilst not adopted for planning purposes, the degree of under-provision in floor area from a national standard, but more importantly, the quality of the space in the Studio Flat would not meet the requirement of the Framework on good design. The arrangement and access to the sleeping area would lack a reasonable level of amenity as sought in Policy QD27.

Planning and Listed Building Balance, and Conclusions

23. Harm has been found to the architectural and historic significance of the listed building and the courts have determined that considerable importance and weight should be given to such harm. The appellant has put forward what he considers to be public benefits in the event that his argument that no harm would be caused to the listed building is not accepted, which is the case.
24. The appellant accepts that the Council can demonstrate a 5 year supply of housing land, based on the housing provision of 13,200 units. However, the

Objectively Assessed Housing Needs Report of 2015 stipulate a figure of 30,120 in the Plan period to 2030, so the appellant considers there to be a shortfall of over 16,000 units as a result and that any proposal to provide more housing should be embraced. A number of policies are cited that support the supply of housing in sustainable locations and existing buildings.

25. The Council accept that the Examining Inspector agreed the 13,200 figure as a minimum requirement, and the appellant refers to the Inspector's findings that the Council should '*rigorously assess all opportunities to meet housing need*'. In addition paragraph 47 of the Framework states the requirement to boost significantly the supply of housing.
26. It appears that Flats 1, 2 and 3 existed, so that the appeal works would add a single Studio Flat, but would also add bed-spaces. To that extent more people could be housed in the building. The site is in a highly accessible location with many bus routes nearby and a range of services and shops are immediately outside or a short walk away. Housing could well be the optimum viable use already, but intensification of that use in the way proposed is not in the best interest of the listed building.
27. The proposal would generally serve the economic and social roles of sustainable development well, due to this town centre location and the provision of additional accommodation, although the standard of accommodation cannot be said to be of the high quality of built environment sought in the social role. The environmental role would not be well served at all as the proposal fails to protect the historic environment.
28. In the balance, the harm to the listed building is not outweighed by the public benefits, and the provision of more accommodation does not justify the standard of that accommodation in the case of the Studio Flat. For the reasons given above it is concluded that both appeals should be dismissed.

S J Papworth

INSPECTOR

