



Appeal Decision

Site visit made on 22 January 2019

by **Philip Willmer BSc Dip Arch RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 February 2019

Appeal Ref: APP/Q1445/W/18/3207549

38a Upper Gardner Street, Brighton, East Sussex, BN1 4AN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Sussex Property Investments Ltd against the decision of Brighton and Hove City Council.
 - The application Ref BH 2018/00641 is dated 28 February 2018.
 - The development proposed is for part conversion and extension of the existing B8 storage to provide B1a office floor space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Subsequent to the appeal against non-determination being lodged the Council resolved that had it at that date been in a position to determine the application it would have refused permission on the grounds that:

The proposed bridge building over the access on the east part of the site, by reason of its excessive height, flat roof form, massing and fenestration detailing, would be out of keeping with its immediate setting, and wider North Laine Conservation Area, contrary to Policies CP12 and CP15 of the Brighton and Hove City Council's Development Plan-*Brighton and Hove City Plan Part One* (Adopted March 2016) and saved Policy HE6 of the Brighton and Hove Local Plan 2005 (Adopted July 2005); and,

The proposed bridge building over the access on the east part of the site, by reason of its height, depth proximity to the shared boundary, would result in a significant loss of light to the first floor window at 38 Upper Gardner Street, and a significantly harmful increase to the sense of enclosure of the already constrained rear out door amenity space. In addition the proposed first floor terrace over the extension to the existing building between 39 Upper Gardner Street and 36-39 Queen's Gardens would result in harmful overlooking of the first floor rear window at 38 Upper Gardner Street. The proposed development would harm neighbouring amenity, contrary to saved Policy QD27 of the Brighton and Hove Local Plan 2005 (Adopted July 2005).

Main Issues

3. I therefore consider the main issues to be:

- a) whether the proposed development would serve to preserve or enhance the character or appearance of the North Laine Conservation Area; and,
- b) whether the proposed bridge building over the access on the east part of the site would result in such a significant loss of light to the first floor windows at 38 Upper Gardner Street, result in such a harmful sense of enclosure of the rear outdoor amenity space and whether the proposed first floor terrace over the extension to the existing building between 39 Upper Gardner Street and 36-39 Queen's Gardens would result in a loss of privacy leading to overlooking of the first floor rear windows at 38 Upper Gardner Street so as to cause harm to the living conditions of the neighbouring occupiers.

Reasons

- 4. The appeal site, 38a Upper Gardner Street, comprises a vacant plot fronting Upper Gardner Street, giving access to a large 'T' shaped parcel of land to the rear. The access is located between a large flint faced warehouse and a modern two-storey residential terrace. There is a two-storey warehouse at the southern end of the 'T' shaped plot. The appeal site is located in the North Laine Conservation Area.
- 5. Upper Gardener Street comprises a mix of development, including 19c two-storey residential terraces, modern two-storey terraces, an infant school dating from 1887, a large warehouse and a number of smaller warehouses/light industrial buildings.

Conservation Area

- 6. The appellant proposes the construction of a two-storey, flat roofed, linking structure or bridge at first and second floor level between numbers 38 and 39 Upper Gardener Street to provide two floors of offices. Although a staircase to the higher levels is proposed, the access to the area behind the Upper Gardener Street frontage would generally be maintained at ground level. The existing warehouse building behind number 39 would be extended and altered to provide additional office accommodation.
- 7. In respect of the proposed alterations to the existing warehouse at the rear, the Council finds no harm to the conservation area. Given its location behind frontage buildings and from what I have seen and read I would not disagree with its findings in this respect.
- 8. Concerns have been raised about the potential impact on the flint walls of the warehouse as a result of the construction of the bridge structure. Views of flint walls would to some extent be diminished from the public view. However, by careful design detailing I believe that the existing flint work could be retained undamaged by the development of the bridge. Accordingly, in the event that I were minded to allow this appeal this is a matter that could be addressed by a suitably worded condition.

9. Similarly the Council is concerned about the material from which the gates to the street frontage should be fabricated. This could likewise be resolved by condition as proposed by the appellant.
10. There is a significant contrast in the scale, form and fenestration pattern between both the existing warehouse and the neighbouring terrace of the modern two-storey houses when viewed from the street. In principle, therefore, in terms of its height, flat roofed form and the two-storey projecting window, I consider that the proposed infill structure would appear as a well mannered architectural device to link two very different buildings, being the warehouse and terraced houses.
11. However, due to the location of the bridge, forward of and finishing above the roof of the terrace housing, it would result in an awkward and unattractive junction to the roof of the neighbouring dwellings. I consider that the relationship of the bridge and the roof of the terrace housing at this point would not only have a negative impact on the street scene but also the character and appearance of the conservation area.
12. The National Planning Policy Framework (the Framework) requires great weight to be given to the conservation of designated heritage assets, which include conservation areas. It draws a distinction between substantial harm and less than substantial harm to such an asset. In my judgement I consider that in this case the proposed development would not lead to substantial harm to or a total loss of significance of designated heritage asset. Accordingly the harm should be weighed against public benefits, including securing the optimum viable use.
13. The proposed development would clearly provide some economic benefits. However, given the harm that has been identified I conclude that the public benefits would not outweigh this harm, or the conflict that it would have with the objectives of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Framework and saved Policy HE6 of the Brighton and Hove Local Plan 2005 (Adopted July 2005) (LP) and Policies CP12 and CP15 of the Brighton and Hove City Council's Development Plan - *Brighton and Hove City Plan Part One* (Adopted March 2016) (CP) as they relate to the quality of development, and the preservation or enhancement of the character or appearance of conservation areas.

Living conditions

14. Due to the proposed height and location of the bridge structure adjacent to the boundary of number 38 Upper Gardner Street and its projection beyond the rear wall of the dwelling, I consider that it would result in an increased sense of enclosure of the rear outdoor amenity space for neighbouring residential occupiers. Although I accept that this is a high density urban environment, I nevertheless consider, on balance, that in this case this enhanced sense of enclosure would cause harm to the living conditions of the occupiers of number 38.
15. Given that the first floor windows of number 38 Upper Gardner Street either face the street or the rear yard, I am not persuaded that the proposed bridge structure would result in a loss of daylight to the existing first floor windows of 38 Upper Gardner Street.

16. Further, given the overall height of 39 Upper Gardner Street located to the south of number 38 being much higher, I do not believe that the new bridge building would result in such a significant increase in overshadowing of the first floor windows of number 38 as to cause material harm to the occupiers' living conditions.
17. The design incorporates the construction of a single storey extension with a terrace over to the existing warehouse east of 36 Queen's Gardens, between 39 Upper Gardner Street and 36-39 Queen's Gardens. Due to the height of the existing boundary wall there would be no overlooking of the rear outdoor amenity space of 38 Upper Gardner Street. However, I consider that it would result in overlooking of the first floor window to the rear of number 38 leading to a loss of privacy. However, if I were minded to allow the appeal this concern could be addressed by a suitably worded condition requiring the erection of a screen to the proposed terrace.
18. I conclude, in respect of the second main issue, that the proposed development would not cause harm to the residential living conditions of the occupiers of 38 Upper Gardner Street in terms of loss of daylight, overshadowing and, subject to the erection of a privacy screen to the new terrace, a matter that could be conditioned, it would not lead to overlooking or a loss of privacy. However, the projection of the bridge beyond the rear wall of the neighbouring dwelling would result in an increased sense of enclosure of the rear outdoor amenity space for neighbouring residential occupiers. This would cause harm to residential living conditions contrary to saved LP Policy QD27, which amongst other things seeks to protect residential living conditions.

Conclusions

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR