

## Appeal Decisions

Site visit made on 13 February 2017

by **Kenneth Stone BSc Hons DipTP MRTPI**

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

Decision date: 21 February 2017

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**Appeal Ref: APP/Q1445/W/16/3163639**

**5 Kings Gardens, Hove BN3 2PE**

- 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 J B Howard Properties Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2016/02693, dated 19 July 2016, was refused by notice dated 12 September 2016.
  - The development proposed is described as 'conversion of existing lower ground floor storage areas to form 1 no self-contained studio flat'.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are; firstly, whether the proposed development would provide acceptable living conditions for future occupants with regard to privacy, outlook, daylight and internal space; and secondly the effect of the proposed development on the living conditions of the occupants of the adjacent basement level flat.

### Reasons

#### *Living conditions of future occupants*

3. The proposed development would result in the conversion of basement level space to a studio flat for one person and include external alterations including the provision of a roof lantern and new windows onto an extended lightwell area.
  4. The proposed basement flat would, according to the appellant, measure some 40.7 sq m, whereas the Council, in the officer's report, identify the unit as being some 39 sq m. The appellant contends that the internal dimensions are in excess of the national space standard set out in the 'Technical housing standards – nationally described space standards' and therefore are acceptable. The technical standards do not however include reference to studio flats and therefore are not directly applicable. However for one bedroom flats for one person occupancy where the flat has a shower room the standard identifies a minimum space of 37 sq m with 1.0 sq m built in storage. Even taking account of the Council's identified unit size the flat would be in excess of the national standard for a one bedroom one person unit.
  5. The Council have noted that it has not yet adopted the national standards but it does not point to a specific development plan policy in its report which
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- identifies internal space requirements against which it has assessed the scheme and the national standard is a material consideration for me to take into account.
6. The studio flat would provide for a separated WC and shower facility and a separated space for bedroom living room and kitchen space accessed along a corridor. The shape and form of the spaces mean that a significant area is given over to circulation space in gaining access between these areas. Whilst much of the existing supporting walls are cut back by necessity elements are to be retained and this has the effect of limiting the layout and arrangement of the flat. Whilst the furniture layout is indicative it does demonstrate the limitations of the layout in particular the table arrangement would not be useable in that location and the bedspace is cramped.
  7. In terms of outlook the flat relies on windows in the north facing wall onto an extended lightwell area. New windows are created, one of which would be obscure glazed and one of which would be clear glazed. This later window is the only window for the whole flat that would provide any outlook. The outlook that would be provided is created by further excavating an area of an existing light well to just below cill level. The new terrace area would be planted or landscaped but this, given its close proximity would affect the outlook from that window. I regard the outlook for the whole flat being reliant on this one compromised window as being inadequate.
  8. The appellant has supplied a technical report on daylight in the flat and this suggests that the BRE standards would be achieved. The light to the flat is achieved through a roof light above the main living area and the new windows in the north elevation. I have no evidence to challenge these findings and therefore find that the overall level of daylight for the flat is acceptable.
  9. The new windows that are in the north elevation are onto an expanded lightwell that the occupant of the adjoining flat has access to but the occupant of the proposed flat would not. Although there would be a retained terrace adjacent to the main clear glazed window of the proposed flat given the accessibility of the area for the occupants of the adjoining flat and the limited separation between this window and the accessible areas there is the potential for views into the proposed flat. These views would compromise the privacy of future occupiers given the closeness and inter-relationship of these elements
  10. For the reasons given above I conclude that the proposed development would not provide for satisfactory living conditions for the future occupiers of the development, having regard to privacy, outlook and internal space. Consequently it would conflict with policy QD27 of the Brighton and Hove Local Plan (retained policies march 2016) (BHLP) which seeks to ensure that development has due regard to the amenity of future occupiers amongst other matters. This is consistent with the National Planning Policy Framework and in particular bullet point 4 of paragraph 17 which advises the planning system should always seek a good standard of amenity for all existing and future occupants of land and buildings.

*Living conditions of occupants of adjoining basement level flat*

11. The adjoining basement level flat has access to the existing lightwell area between the front of the building and the public highway. The proposals would result in this area being further excavated which would improve the light levels

and outlook for the occupants of that property. This would be a positive benefit of the scheme, but it would be only a relatively limited improvement and I therefore ascribe it limited weight.

12. The occupation of additional space at basement level in the proposed flat and the introduction of windows facing onto this amenity space would result in additional overlooking of it from the proposed flat. However, the space is to the front of the house and already overlooked from the public highway above it is therefore not a particularly private space. The noise and disturbance from the occupation of a studio flat in a residential area would be limited. This would have a very limited impact on the conditions enjoyed by the occupants of the adjoining basement level flat given the proximity to the highway, the comings and goings along that, and the street lighting.
13. For the reasons given above I conclude that the proposed development would not result in material harm to the living conditions enjoyed by the occupants of the adjoining basement level flat as a result of activity, noise, disturbance or additional lighting. Consequently it would not conflict with policy QD27 of the BHLP which, amongst other matters seeks to protect the amenities enjoyed by occupants of adjoining properties.

#### **Other matters**

14. The proposed development would result in the introduction of a lantern feature to provide daylight to the basement flat. The appeal site is located in the Avenues Conservation Area and adjacent to 4 Kings Garden, a listed building. Given the minor scale and nature of this aspect of the scheme works I agree with the Council that this would not affect the appearance of the conservation area, which would therefore be preserved, or the setting of the listed building.
15. I note the shortfall of the Council's housing requirement against its objectively assessed need but the addition of one studio unit would not significantly address this situation and would not outweigh the concerns I have expressed above.

#### **Overall conclusions**

16. Whilst I have found that there would be a limited improvement for the outlook and daylight of the occupiers of the adjoining basement level flat and that their living conditions would not be harmed, I have found that the proposed flat would not provide for acceptable living conditions for the future occupiers of the flat. The failings in the scheme outweigh the benefits, including the provision of an additional housing unit, and therefore the scheme would not achieve the social and environmental roles that are required to make it sustainable development.
17. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR

