



Appeal Decisions

Hearing held on 8 January 2014

Site visit made on 8 January 2014

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 22 January 2014

Two Appeals at 22A Baron Estates, East Street, Brighton BN1 1HL

- The appeals are made by Mrs Nazila Blencowe, Baron Homes Corporation, against the decisions of Brighton & Hove City Council.
 - The development and works proposed is conversion of upper floors from offices to two flats.
-

Appeal A Ref: APP/Q1445/A/13/2200163

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application Ref BH2012/03423, dated 25 October 2012, was refused by notice dated 17 December 2012.
-

Appeal B Ref: APP/Q1445/E/13/2200168

- 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 application Ref BH2012/03424, dated 25 October 2012, was refused by notice dated 17 December 2012.
-

Decisions: Appeals A and B

1. The appeals are dismissed.

Procedural matter

2. The entrance to the appeal premises is in Bartholomews, but its postal address was confirmed by the appellant's agent to be 22A East Street. For the avoidance of doubt, it includes the upper floors of the buildings identified on the location plans submitted with the applications as 22, 22A, 23 and 23A East Street, and it is referred to as such in the Council's decision notices.

Main issues

3. The listed building, numbers 22, 22A, 23 and 23A East Street, is listed in Grade II and it is located within the Old Town Conservation Area. The Conservation Area is mainly characterised by historic terraced buildings in a mix of uses. The Council has not raised concerns about the Conservation Area in its reasons for refusal. As the proposed development and works would mainly affect the interior of the upper floors of the listed building, the appearance of the Conservation Area would be preserved. The ground floor and basement retail units would not change, and either commercial or residential use of the upper floors would preserve the mixed character of the Conservation Area, so I agree. With this in mind, from my inspection of the site and its surroundings, and

from the representations made at the hearing and in writing, I consider that the main issue in Appeals A and B is:

- Whether the proposed development and works would preserve the special architectural or historic interest of the listed building, and, in Appeal A only, in addition:
- The effect that the proposed change of use would have on the economic vitality and employment opportunities in the city centre.

Reasons

Listed building

4. The listed building includes what was probably 3 terraced late C18 or early C19 townhouses. It now includes ground floor shops with offices on the first and second floors. The historic architecture of the upper floors reflects the historic use of the listed building as dwellings, and this contributes positively to its special architectural interest which it is desirable to preserve, and to the significance of the heritage asset.
5. The proposed horizontal subdivision to form a flat on each floor would be a further change from the historic vertically divided terraced dwellings. However, the conversion of the upper floors to flats would be in accordance with the well established principle that the best use of a heritage asset is often the use for which the building was first intended.
6. The appellant's heritage statement includes the list description but it says little about the interior, where the proposed alterations would take place. The list description notes that the interior was not inspected, but this does not imply that the interior is not important. Great weight should be given to the asset's conservation. So, whilst some historic partitions and internal features have been removed or altered in the past, it is all the more important to conserve the historic fabric and internal features that remain. However, there was little evidence that the evolution of the building had been investigated, or that its historic fabric and features of special interest had been identified.
7. The historic plan form can be one of a heritage asset's most significant features. Even so, the proposed layout of the flats does not appear to have been informed by an understanding of the former siting of the original internal walls. The proposal includes the reinstatement of part of one spine wall and 3 front-facing rooms on both floors. However, insufficient clear and convincing justification was put to me to show that the new walls would respect the historic plan form, or that the scale and proportions of the original principal rooms would be reinstated. Whilst the layout should reasonably satisfy modern living standards, it includes irregularly-shaped rooms, discordant junctions of walls with existing windows, and poor relationships with historic features including a chimney breast, which would damage the special interest of the listed building.
8. From the Council's evidence at the site visit, both staircases include early historic fabric, and the staircase leading to Regent Arcade is largely intact. From what I saw, I agree. However, the latter staircase would be a fire escape from the second floor flat, so it might rarely be appreciated. The views into the light well reveal the characteristic contrast between the elegant fronts and the utilitarian backs, but the plant in the light well and proposals for it are not

shown on the plans. So, whilst they would not be lost, the layout fails to take into account features of special interest which contribute positively to the significance of the heritage asset. The proposed new doors and architraves would fail to respect traditional proportions and existing historic mouldings.

9. Some matters, including the detailed design of the new doors and architraves, could reasonably be dealt with by the main parties' suggested conditions. However, conditions could not be imposed to overcome the harm that the proposed layout would cause, because they would not be reasonable or precise. Although, in terms of the *National Planning Policy Framework* (Framework), the harm to the heritage asset would be less than substantial, the public benefits, including securing the optimum viable use and the need for housing, would be insufficient to outweigh that harm.
10. I consider that the proposal would fail to preserve the special architectural interest of the listed building. It would be contrary to Policies HE1 of the *Brighton & Hove Local Plan 2005* (LP) which reflects the thrust of the statutory duty with regard to listed buildings, and LP Policy HE4 which seeks the reinstatement of original features where appropriate. It would also be contrary to the Framework which aims for heritage assets to be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

Economic vitality and employment opportunities

11. LP Policy EM5 states that planning permission will not be granted for the change of use of offices premises to other purposes unless they are genuinely redundant, because the premises are unsuitable and cannot be readily converted to provide different types of office accommodation, or where a change of use is the only practicable way of preserving a building of architectural or historic interest. Redundancy will be determined by considering a number of factors including the length of time the premises have been vacant, together with the marketing strategy adopted, and the prevailing vacancy rate for the size and type of office. Emerging Policies SA2 and CP3 of the *Brighton & Hove Submission City Plan Part One* (CP) maintain this thrust.
12. The Framework says that local planning authorities should normally approve planning applications for change to residential use from commercial buildings, where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate. The Council's proposed Article 4 direction to remove the government's recently introduced temporary permitted development rights for changes of use from offices to residential uses is not relevant because the appeal premises is part of a listed building. Whilst the main parties agreed at the hearing that there is an identified need for housing, the Council's evidence base¹ for the emerging CP also confirms that the city has a significant shortage of higher quality office accommodation, particularly up to 460 m² in size.
13. Although the floor area of the offices is roughly 216 m², and despite the low vacancy rates for such accommodation in the central city area, the premises have been actively marketed, as a whole and on a floor by floor basis, without success since May 2009. There was no schedule of viewings, but the

¹ *Brighton & Hove City Council Employment Land Study 2012 Final Report*

appellant's agent confirmed at the hearing that few viewings had taken place and no offers had been made. The Council's economic development officer has confirmed that the offices have been actively marketed for a sustained period at a competitive rental level, taking into account the location and the size of the space. From the evidence put to me, I see no reason to disagree.

14. Due to the constraints of the listed building, including the cellular layout of the historic dwellings, its domestic scale, including the narrow doorways and narrow winding stairs, and the lack of ground floor space to provide for inclusive access, the premises would not provide the higher quality office accommodation sought in the area. Moreover, because the building is a designated heritage asset, it could not readily be converted to provide other types of office accommodation without unacceptably eroding its significance.
15. The Council's main concern was that there had been no period of vacancy because the appellant has occupied the offices since about September 2008. However, this is in accordance with the well established principle that the best way to preserve a listed building is to keep the building in active use. It has been a temporary measure as the appellant has had, and continues to have, other offices available for the business elsewhere in the city. The appellant's agent explained that potential occupiers were made aware that the offices could be vacated at short notice, so little weight can be attached to the view that they would have been deterred by the presence of the existing occupiers.
16. Furthermore, my colleague allowed appeals for development and works including the change of use of first, second, third and fourth floors from disused offices to four self-contained flats at the adjoining listed building, 6 Bartholomews, in his appeal decisions ref APP/Q1445/A/13/2189903 and APP/Q1445/E/13/2189912. Whilst the Council confirmed that there had been no objection to the loss of offices because the upper floors at 6 Bartholomews had been vacant, they had been occupied by squatters and considerable malicious damage had been done to the interior of that listed building. As heritage assets are an irreplaceable resource, this also supports the appellant's occupation of the premises. So, in this case a period of vacancy would not be reasonable or necessary, and no other concerns were expressed in the Council's reason for refusal or at the hearing.
17. As the appellant has shown that the offices are to all intents and purposes redundant, and they have been for over 3 years, the change of use would not cause their unacceptable loss. I therefore consider that the proposal would not harm the economic vitality and employment opportunities in the city centre. It would satisfy the thrust of LP Policy EM5, and the Framework.

Conclusions

18. Whilst the proposal would not harm the economic vitality and employment opportunities in the city centre, the failure to preserve the special architectural interest of the listed building is a compelling objection to the scheme. For the reasons given above and having regard to all other matters raised, Appeals A and B fail.

Joanna Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Burgess BA(Hons) Appellant's agent,
BPI MRTPI Director, Lewis & Co Planning

FOR THE LOCAL PLANNING AUTHORITY:

Robert McNicol Planning officer,
 Development control and planning policy team,
 Brighton & Hove City Council

Tim Jefferies BA(Hons) Senior planning officer (conservation),
DipTP IHBC Heritage team, Brighton & Hove City Council

DOCUMENTS PUT IN AT THE HEARING

- 1 The Council's suggested conditions.
- 2 Appendix 2 of Agenda Item 19 of the Council's 11 July 2013 Policy & Resources Committee, regarding the proposed Article 4 direction, put in by the Council.
- 3 Inspector's letter dated 13 December 2013 regarding the *Brighton & Hove Submission City Plan Part One (CP)*, put in by the appellant.
- 4 The Council's notification of the hearing and the list of persons notified.
- 5 Marketing details submitted with the planning application in Appeal A, put in by the appellant.
- 6 Baron Estates' marketing particulars, put in by the appellant.
- 7 Appeal decisions APP/Q1445/A/13/2189903 and APP/Q1445/E/13/2189912, put in by the appellant.
- 8 CP Policies SA2 and CP3, put in by the Council.
- 9 The Council's suggested condition for new services.