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## Appeal Decisions

Site visit made on 17 September 2014

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

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

**Decision date: 2 October 2014**

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**Appeal A: APP/Q1445/A/14/2217668**  
**32 Montpelier Crescent, Brighton, Sussex BN1 3JJ**

- 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 Mike Stimpson Properties against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/03447, dated 5 October 2013, was refused by notice dated 10 January 2014.
  - The development proposed is 2 ground floor flats.
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**Appeal B: APP/Q1445/E/14/2217667**  
**32 Montpelier Crescent, Brighton, Sussex BN1 3JJ**

- 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 Mike Stimpson Properties against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/03450, dated 5 October 2013, was refused by notice dated 10 January 2014.
  - The works proposed are 2 ground floor flats including minor alterations to flat entrance doors, boiler and shower room, and change of material of rear door/window.
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### Decision Appeal A

1. I dismiss the appeal.

### Decision Appeal B

2. I allow the appeal and grant listed building consent for 2 ground floor flats including minor alterations to flat entrance doors, boiler and shower room, and change of material of rear door/window at 32 Montpelier Crescent, Brighton, Sussex BN1 3JJ in accordance with the terms of the application Ref BH2013/03450, dated 5 October 2013 and the plans submitted with it subject to conditions 1) to 4) on the attached schedule.

### Main Issues

3. In Appeal A these are:
  - The effect of the proposal on the aims of Development Plan policies which seek to control the conversion of existing units.
  - The effect of the proposal on the living conditions of future residential occupiers with particular regard to privacy.

and in Appeal B;

- The effect of the proposal on the architectural or historic significance of the listed building.

## Reasons

### *Subdivision*

4. Local Plan Policy HO9 is entitled '*residential conversions and the retention of smaller dwellings*' and states that planning permission will be granted for the conversion of dwellings into smaller units of self contained accommodation when, among other matters, the original floor area is greater than 115m<sup>2</sup>, or the dwelling has more than three bedrooms as originally built; and at least one unit of accommodation is provided which is suitable for family occupation and has a minimum of two bedrooms. With regard to this latter requirement, criterion b), exceptions are allowed.
5. There was a divergence of opinion between the Council and the appellant over the size of the original dwelling, despite both having measured the same drawing. It transpired through further submissions that the Council had measured a net internal area, whereas the appellant had measured a gross internal area over internal walls. Whilst not agreeing to the gross internal area methodology, the Council agreed that this gave a figure of 117m<sup>2</sup>. The footnote to the policy states that the calculation must be based on '*internal dimensions only*' but does not refer to either gross or net. The purpose of the stated 115m<sup>2</sup> is to define a small dwelling in the terms of the policy, and the alternative of having three bedrooms has no size or sleeping accommodation stated for those rooms. For the purposes of this appeal, it is now considered that the original dwelling was over 115m<sup>2</sup> as gross internal floor area is a recognised and reasonable measurement for residential property.
6. The other part of criterion a) is that the dwelling should have more than three bedrooms as built. Whilst there is some confusion in that drawing 33921/1c shows two bedrooms, whereas the appellant claims that the front lounge was in fact a bedroom, the policy requires '*more that three bedrooms*' which means four or more, not three or more.
7. These two parts are alternatives and it is not necessary to comply with both parts, it is therefore sufficient that the original dwelling should be regarded as being greater than 115m<sup>2</sup> in floor area.
8. Turning to criterion b), neither flat is shown on the drawings to have more than one bedroom but there are exceptions provided for in the policy as follows;
  - i) *A different mix of units is essential to preserve the character of a listed building.* It has not been shown to be the case that designing the layout to provide two bedrooms in one unit would have adverse effects on the listed building's character, and the conversion from the existing single flat is not essential to preserve the character of the listed building as a whole.
  - or;
  - ii) *A different mix of units is necessary to meet the needs of existing occupants who will remain on completion of the conversion.* No information has been provided to support this exception.

iii) *The proposal is poorly located to meet the need of families.* This does not appear to be the case and there is a grassed area opposite the building.

*or;*

iv) *The proposal is specifically for people with special housing needs.* No information has been provided to support this exception.

Therefore, the exceptions to criterion b) have not been shown to be applicable and so the criterion requirement for at least one unit of accommodation to provide two bedrooms is appropriate, and this requirement is not met.

9. In conclusion, the proposed subdivision fails the policy test with regard to the accommodation to be provided, and this would harm the aims of the policy in the retention of smaller dwellings suitable for family accommodation for which there is a stated need.

### *Living Conditions*

10. Policy HO9 also states at criterion c) that permission will be granted when the proposal is not detrimental to adjoining properties, including those within the same building, in terms of noise and nuisance, and there is adequate provision for the storage of refuse. The original arrangement appears to be that the rear bedroom of the main part of the single flat looks towards the garden and the rooms of the rear addition, but these were all within the same flat. It does appear to be the case however that this room also overlooks a light well to the basement flat, and that the rear garden area is already overlooked by various windows and a fire escape on this building and neighbouring ones. The presently intervening shed is said to be unlawful, and the test should be the degree of privacy possible without that shed in place.
11. With regard to the use of the garden, the angle of view still leaves areas of privacy, and having mind to the distance and the nature of the enclosed rear space, the effect of allocating the rear bedroom to a second occupier separate to that of the rear garden would not be likely to cause the nuisance referred to in the policy wording, nor reduce the level of privacy so as to cause harm to living conditions in planning terms.
12. The other part of the Council's concern is with regard to overlooking from the same bedroom towards the bay window of the proposed lounge in the rear flat. The bay window is slightly lower, and the depth of framing and the solid roof limit the direct view into the room that is available. The side glazing nearest the back wall of the main building may be more vulnerable, but this does not contribute greatly to the light available to the room due to the nearby high rear wall of the main building and if the occupier felt it necessary, blinds or curtains could be drawn without harm. Here again the affect is not so great as to call into question compliance with the aims of criterion c) of Policy HO9.

### *Listed Building*

13. The Council's concerns in the listed building appeal are to do with the possibility of harmful movement through the placing of a duct within the thickness of timber floor joists, and the nature of the stair finishes that are presently encased within a partition.
14. On the first, it appears that the duct would run mainly along the line of the joists and within their depth, but that there is a need for at least two joists to

be modified to allow the duct to cross them. The proposal is to drill the joists and generally a hole in the centre, along the neutral axis of a beam, where there is neither compression nor tension, is the best location. However at a stated 75mm diameter, there could be a risk of removing too much material that is in either compression or tension and thus weakening the joist, which even if not leading to catastrophic failure, could result in deformation and harm to architectural and historic features. This however is a design matter and solutions, such as metal flitch plates or the like attached to the joists to make-up for the lost material would limit any deflection. A condition could be utilised to ensure that this work did not proceed until the details have been submitted to and approved in writing by the Local Planning Authority.

15. With regard to the architectural features at the foot of the stairs, it is not possible to know the extent to which these are in place but covered up, or whether they have been removed to allow the partition to be built. Either way, the proposed layout shown on drawing 33921/2D exposes the string of the stair by removing the partition. This exposure and more authentic plan form would be a benefit of the proposed works, and will allow a decision to be made on the works required to ensure the architectural features are preserved, or enhanced. This matter can also be dealt with by condition, and details of doors and windows, and render finishes to the front elevation should also be sought.
16. In conclusion, the proposed works would not harm the architectural or historic interest of the listed building and the requirement in section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, would be met. The proposals would accord with Policy HE1 and criterion f) of Policy HO9 on the preservation of listed buildings. For those reasons it is concluded that listed building consent should not be withheld.

### **Conclusions**

17. The subdivision does not comply with Policy HO9 and would harm the aims of the policy to retain a stock of smaller dwellings suitable for family accommodation, but the listed building works are acceptable. For the reasons given above it is concluded that Appeal A should be dismissed but that Appeal B should be allowed and listed building consent granted.

*S J Papworth*

INSPECTOR

### Schedule of Conditions Appeal B, Listed Building Consent

1) Notwithstanding the information submitted, no further works shall take place until the detailed design including materials and finishes of the following items has been submitted to and approved in writing by the Local Planning Authority:

- i) A new external doors (including reveals and door furniture).
- ii) All new internal doors (including door furniture).
- iii) All new windows (including reveals).
- iv) Any new timberwork for the principal ground floor staircase.

The design and details shall be accompanied by elevations and section drawings to a minimum scale of 1:5 with full size moulding cross sections, where mouldings are used. The works shall thereafter be implemented strictly in accordance with the agreed details.

- 2) No further works shall take place until a method statement and detailed drawing setting out how the extract flue for the ground floor bathroom (to the front of the principal building) is to be installed in the floor void including the diameter of the flue pipe, the position of the flue, the dimension and position of the joists and where the flue pipes is to be run through the joists and walls with the diameter, and method of creating and strengthening the holes indicated, have been submitted to and approved in writing by the Local Planning Authority. The installation works shall be carried out and completed fully in accordance with the approved method statement and detailed drawing prior to the occupation of the dwelling to which this work relates.
- 3) No further works shall take place until a method statement setting out how the balustrade (including handrail and upright posts) and other architectural features to the principal ground floor staircase are to be protected during demolition of the partition wall, and how the balustrade and other features will be repaired and reinstated, have been submitted to and approved in writing by the Local Planning Authority. The works to the stair and hallway shall only be carried out if in full accordance with the approved method statement.
- 4) All new and disturbed surfaces shall be made good at the time of carrying out the works using materials of matching composition, form and finish to those of the Listed Building, and this requirement is to include in addition, making good to works to the front elevation render where work has previously been carried out.