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# Appeal Decision

Site visit made on 27 October 2014

**by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI**

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

**Decision date: 27 November 2014**

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**Appeal Ref: APP/Q1445/A/14/2219165**

**Flat 6, 31 Sussex Square, Brighton, East Sussex BN2 5AB**

- 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 Jonathan Rolls against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/02537, dated 23 July 2013, was refused by notice dated 22 November 2013.
  - The development proposed is railings to enclose rear elevation balcony of flat No 6.
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## Decision

1. The appeal is dismissed.

## Main issues

2. The main issues in this appeal are the effects of the development on the living conditions of adjacent occupiers in terms of noise and disturbance and on the special architectural and historic interest of the listed building and its setting.

## Procedural matters

3. The Council did not attend the site visit but with its agreement, the appellant gave me access to the site.
4. After the site visit the further views of the parties were sought on the duty under section 66(1)) of the PLBCA Act<sup>1</sup> and the case of *Barnwell Manor Wind Energy Limited v East Northamptonshire DC v SSCLG and others [2014] EWCA Civ 137 (Barnwell Manor)*. These views have been taken into account in my decision.

## Reasons

### *Significance*

5. Sussex Square is a set piece of Regency townscape arranged in a U shaped plan; most of the large terraced houses now appear to have been subdivided into multiple flats. The Square is listed Grade I<sup>2</sup> and is part of an important group of buildings designed by Amon Wilds and Charles Augustin Busby in the grand manner for the developer of Kemp Town, Thomas Read Kemp. The main facades are heavily ornamented and have a classical symmetry and order; these facades date from 1825-1827. But behind the facades, the interiors and

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<sup>1</sup> Planning (Listed Buildings and Conservation Area) Act 1990

<sup>2</sup> Sussex Square (north side) Nos 11-40 (Consecutive) and attached railings

rear elevations were constructed to an assortment of plans and to the rear the variation of plan form, depth, height and materials is evident.

6. In terms of no 31 the semblance of order is also evident on the rear elevation and the fenestration, form and materials are more formal than adjacent buildings. The significance of the building as a whole is its part in the greater formal terrace. Although the works would only affect the rear of the building which is not part of the grand design, the composition of the rear of no 31 is of no less importance to the integrity of the building. In this case the pattern, balance and simplicity has been little altered or diluted by the later additions such as fire escapes which are visible to the rear of the adjacent listed buildings. Hence its significance is as a rare example of a building within this listed terrace which still appears to be largely in its original form.

#### *The proposal*

7. The development proposes the erection of metal railings around an existing flat roof to the rear of Flat 6 which is on the 2<sup>nd</sup> floor at the back of No 31.

#### *Living conditions*

8. The flat roof can be accessed via two sash windows although the cills of these is about 70cm above floor level. There were a number of plant pots and window boxes and other objects on the roof. This would suggest that existing or previous tenants make use of the area as an ancillary domestic space.
9. Although concern has been expressed about disturbance resulting from use of the balcony affecting the bedrooms of the flat immediately below (Flat 3), I have been provided with a plan which shows that the space below is circulation space and a stairway. I also saw that the window beneath the flat roof does not appear to serve a habitable room. Moreover the appellant is agreeable to a condition which would restrict access to that required for maintenance purposes only. In those circumstances I consider that there would be little or no additional impact on the living conditions of the occupiers of the flat below because any disturbance would, at worst, be intermittent.
10. Accordingly I find on this first issue that there would be little or no adverse effect on the living conditions of occupiers of Flat 3 which is located below Flat 6. Consequently the development would not conflict with the aims of Policy QD14 and QD27 of the *Brighton and Hove Local Plan* (LP) which both seek, amongst other matters, to ensure that development does not result in significant noise disturbance. This weighs in favour of permission.

#### *Heritage*

11. The character of the rear of no 31 appears to be both neat and relatively unaltered. The classical form of the sash windows, measured composition and clean lines of the parapets have a quiet dignity which is unlike the informal rear elevations more typical of Sussex Square. The rear is described by the appellant as substantially plain without various railings or fire escapes or any special features.
12. The Council has granted Listed Building Consent for the works which are identical to the development before me<sup>3</sup> but I have a duty<sup>4</sup> in this planning

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<sup>3</sup> BH2013/02538: Decision dated 22 November 2013.

<sup>4</sup> Under S66 (1) Planning (Listed Buildings and Conservation Area) Act 1990

appeal to consider the effect of the development on the special architectural and historic interest of the listed building. The building is included on the statutory list and the rear is given the same protection as the front elevation, even if its original features are not specifically noted in the listing description, and its integrity is part of its significance. The Council says that the rear roof area, subject of this appeal, and the two sash windows in Flat 6 appears to be historic if not original to the property and I see no reason to disagree.

13. The National Planning Policy Framework (the Framework) says that great weight should be given to the conservation of a heritage asset, and the more important the asset the greater the weight should be<sup>5</sup>. This principle has been reiterated recently in the case of *Barnwell Manor*<sup>6</sup>. In the case before me the building is exceptional because it is listed at Grade I and thus the quality of the building is considered to be in the top 2% of listed buildings. In these circumstances the conservation of the building has very great weight.
14. I consider the proposed development would seriously harm the asset because it would be an incongruous modern addition in an elevated location and would result in clutter which would be damaging to the present simplicity and formality of the building. Moreover the railings would partially obscure the two sash windows and thus undermine the character, appearance and integrity of the rear elevation.
15. In terms of the effects on the setting of the listed building which is the rear elevation of this terrace and on the conservation area I find, in the light of the above conclusions, that there will be additional harm which adds further weight against the proposals. In reaching these views I have borne in mind that the Council has already granted listed building consent for this proposal, but in the light of statute, case law and guidance I hold to my conclusion.
16. The purpose of the railings is said to be to ensure public safety because tenants can climb out of the sash windows and use the flat roof. But the appellant now says that such use would not be permitted by the terms of the lease and is agreeable to a condition limiting access for maintenance purposes only. Yet such maintenance is likely to be infrequent so does not justify the erection of permanent railings, particularly as maintenance staff are likely to be properly equipped to avoid falling hazards. Hence I attach little weight to that argument and the railings would not be a public benefit that outweighs the harm to the building<sup>7</sup>.
17. The guidance in paragraph 132 of the Framework says that as heritage assets are irreplaceable any harm or loss should require clear convincing justification. Thus in the light of *Barnwell Manor*<sup>8</sup>, the duties imposed by S66(1) and S72(1) of the PLBCA Act, the Grade I listing and the absence of public benefit this weighs heavily against permission.

## Conclusions

18. For the reasons I have given, I find there would be little adverse impact on the living conditions for the occupiers of adjacent flats. But this is heavily outweighed by the serious harm to integrity of the listed building. Accordingly,

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<sup>5</sup> Paragraph 132: The National Planning Policy Framework

<sup>6</sup> South Northamptonshire DC v SSCLG and Barnwell Manor Windfarms Ltd

<sup>7</sup> Paragraph 134: The National Planning Policy Framework

<sup>8</sup> Especially paragraphs 16-29

because the proposal would not preserve the architectural and historic interest of the building, the appeal is dismissed.

*Sukie Tamplin*

INSPECTOR