
Appeal Decision

Site visit made on 22 April 2015

by David Prentis BA BPI MRTPI

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

Decision date: 29 April 2015

**Appeal Ref: APP/Q1445/A/14/2229118
11B (Former Ice Rink) and 11 Queen Square, Brighton BN1 3FD**

- 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 Stonehurst Estates against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/03793, dated 7 November 2013, was refused by notice dated 30 October 2014.
 - The development proposed is demolition of former ice rink and number 11 Queen Square and erection of a 5 no. storey building providing 31 no. residential units (C3) and office use (B1 or A2) at lower ground floor level with associated works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. I have adopted the description of development and site address as set out in the Council's decision notice and in the appeal form. Although described as a 5 storey building the plans show development on 6 levels – upper and lower ground floors and 4 upper floors.
3. An Agreement under s106 of the Town and Country Planning Act 1990 has been submitted. The Agreement would make provision for contributions to education, a local employment scheme, recreation, transport and public art. I comment further on the Agreement below.

Main issues

4. The main issues are the effects of the proposal on the settings of heritage assets and on the living conditions of nearby residents.

Effect on the settings of heritage assets

5. Queen Square leads north from the busy commercial hub of Western Road. The appeal site comprises a former ice rink, which forms the northern end of the square, and No 11 Queen Square which is at the end of a terrace forming the western side of the square. The eastern side of the square is formed by a modern office development at Queen Square House and a 19th century former chapel, now in commercial use, at No 12 Queen Square. The heritage assets of particular relevance to the appeal are the Church of St Nicholas, Nos 1 – 12 Wykeham Terrace and the Montpelier and Cliftonhill Conservation Area.

6. The Church is an asset of particularly high significance, being listed at Grade II*. The listing description notes that it dates from the 14th century and that much of it was rebuilt in the mid 19th century. It was the parish church for Brighton until 1873. The Church is prominently located in an elevated location set within a large churchyard. This open setting allows it to be seen as a free-standing structure and emphasises the status of the building. Moreover, the churchyard provides a relatively tranquil setting for the Church in contrast to the busy urban environment of the city. I consider that the churchyard makes an important contribution to the significance of the Church as a heritage asset.
7. The Montpelier and Cliftonhill Conservation Area is characterised by a formal layout of terraces, crescents and open spaces. The churchyard is an important public space within the conservation area. It is an attractive green space, enhanced by numerous trees, which affords views of the Church and the surrounding townscape. As noted above, it is a calm and tranquil area. In my view the churchyard makes a strongly positive contribution to the character and appearance of the conservation area as a whole, contributing to its significance as a heritage asset.
8. Nos 1 – 12 Wykeham Terrace are Grade II listed buildings. The listing description notes that the terrace dates from 1827–30 and is in the Tudor-Gothic style. The terrace forms a striking architectural composition. It is broadly symmetrical with rich architectural detailing. The roofline is enlivened by battlements, pointed-arched attic windows and elaborate chimney stacks. All of these features contribute to its significance. The setting of the terrace includes the churchyard and the Church itself. The Church and terrace are seen together from some viewpoints. They are also seen in important sequential views because the path leading to the Church from the direction of the town centre passes directly in front of the terrace.
9. Although there are no designated heritage assets within the appeal site it is closely related to the above assets. The western site boundary is adjacent to the rear boundary wall to Wykeham Terrace and the northern boundary of the site is adjacent to a stone wall enclosing the southern edge of the churchyard.
10. The former ice rink is now derelict and roofless. The Council raises no objection to its demolition. Nor does the Council object to the demolition of No 11. Subject to a suitable replacement scheme, I see no reason to disagree.
11. The appeal scheme would be prominently located adjacent to the churchyard. Development is proposed on 6 levels. As seen from the churchyard, the lower ground floor would be below ground level and the upper ground floor would be behind the existing boundary wall¹. Even so, there would be 4 floors visible above the existing boundary. The Design and Access Statement (DAS) comments that the principal height of the proposed building would relate to the predominant height of St Nicholas Lodge, which stands to the east of the churchyard. The DAS also states that the top storey is set back and is conceived as a 'light weight glass lantern'.
12. To my mind these design intentions are not reflected in the submitted drawings. Although the top storey is described as a 'glazed pavilion' on the drawing notes, it contains residential accommodation which will inevitably need a significant degree of enclosure. The 4th floor plans show a conventional layout

¹ Due to the sloping nature of the ground part of the 1st floor would also be behind the churchyard wall.

of walls and window openings. I consider that, in practice, the top storey is likely to appear more solid than is suggested by the submitted elevations. Moreover, the top storey would have only a minimal setback from the northern elevation and would extend for more than half the length of the building. The Council's Conservation Officer commented that the 4th floor would appear more as a continuation of the 3rd floor than as a discreet and subsidiary termination of the building. I agree with that assessment.

13. In my view the height, scale and horizontal emphasis of the proposed building, combined with its proximity to the site boundary, would result in a very dominant presence on the edge of the churchyard. It would not be comparable with St Nicholas Lodge which has a more varied profile and plan form than the proposed building would have. This would have a harmful effect on the relatively open nature of the churchyard, detracting from the quality of the green space and the contribution it makes to the character and appearance of the conservation area. Given that the churchyard forms a key element of the setting of the Church, it follows that the setting of the Church would not be preserved.
14. Turning to the effect on the setting of Wykeham Terrace, I note that the proposed development would not be seen in views from immediately in front of the terrace. Nevertheless, the proposed building and the terrace would be seen together in views from the churchyard. In these views the new building would rise up immediately behind the northern end of the terrace. The height of the new building would be well above that of the terrace and it would be in relatively close proximity. I consider that the new building would dominate the skyline in such views, competing with and distracting from the dramatic roofline of the terrace. This would be harmful to the setting of the listed terrace.
15. The terrace is not seen in isolation in such views because the modern office building at Queen Square House can also be seen. However, Queen Square House is sited further away than the appeal building would be and does not have such a dominant effect.
16. To conclude on the first main issue, the proposal would fail to preserve the settings of the Church of St Nicholas and Wykeham Terrace. Mindful of the relevant statutory duty² this is a matter to which I attach considerable importance and weight. It would also be harmful to the character and appearance of the conservation area due to development within its setting.
17. The harm to the settings of the listed Church, the listed terrace and the conservation area would be harmful to their significance as designated heritage assets. In the terms of the National Planning Policy Framework (the Framework) the harm to significance would, in each case, be less than substantial because setting is but one aspect of the overall significance of the assets in question. Moreover, in each case only part of the setting would be affected. It does not follow that the harm would be minor or unimportant. The Framework emphasises the general importance of sustaining and enhancing the significance of heritage assets. In these circumstances paragraph 134 of the Framework requires the harm to significance to be weighed against the public benefits of the scheme. I return to that balance in the concluding section of my decision.

² S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

18. The appeal proposal would conflict with Brighton and Hove Local Plan (LP) Policies HE3 and HE6 which seek to protect the settings of listed buildings and conservation areas.

Effect on the living conditions of nearby residents

19. The Council is concerned about loss of daylight and increased sense of enclosure affecting dwellings at Wykeham Terrace, concerns which are shared by local residents. Residents have also raised concerns about overlooking of properties in Queen Square and St Nicholas Lodge and about noise and disturbance arising from additional traffic in Queen Square.
20. The application was supported by a daylight assessment which uses an established methodology. Neither the methodology nor the findings have been disputed by the Council. The assessment identifies that daylight is already restricted at the rear of Wykeham Terrace, no doubt due to the limited space between the terrace and the former ice rink building. It concludes that daylight to the most affected windows would not be reduced to a degree which would conflict with the relevant technical guidance. I see no reason to doubt that conclusion.
21. Even so, I share the Council's concern in relation to the visual impact of the proposed development. The properties most affected would be Nos 9, 10, 11 and 12 Wykeham Terrace. The back gardens of the terrace are quite small and are enclosed by high walls to the rear. In relation to these gardens, the adjoining part of the proposed development would effectively be 5 storeys in height. Although the 2nd and 3rd floors would be stepped in from the boundary they would still be relatively close to the back of the terrace. This would have an unduly overbearing and enclosing effect on the rear windows and gardens of the nearest properties in Wykeham Terrace to an extent which would be harmful to the living conditions of the occupiers.
22. Potential overlooking between Wykeham Terrace and the west elevation of the proposed building could be prevented by the use of obscure glazed windows, as suggested by the appellant. This could be controlled by a condition. Some degree of overlooking is inevitable in a dense urban environment such as this. In most cases I consider that the angle of view, together with the separation distance, between proposed windows and balconies and existing windows in Queen Square and St Nicholas Lodge would be such as to avoid undue harm to living conditions. That said, the left hand set of balconies on the southern elevation would be very close to the front elevation of No 10 Queen Square. Having regard to the configuration of the bay window at No 10, I consider that these balconies would result in an unacceptable loss of privacy.
23. Queen Square is close to the busy commercial area along Western Road. It contains a mix of residential and office uses together with a large taxi rank. The proposed development would be mainly residential, with office space at lower ground floor level. This mixed use scheme would be compatible with the existing environment and I do not think that it would result in undue noise and disturbance.
24. On the second main issue, I conclude that the proposal would be harmful to the living conditions of nearby residents at Wykeham Terrace, in that it would cause an unduly overbearing and enclosing effect, and at No 10 Queen Square where there would be a loss of privacy. It would therefore conflict with LP

Policy QD27 which seeks to protect the amenity of adjacent residential occupiers.

Other matters

25. The appellant makes extensive references to a comparison between the appeal scheme and a proposal for a serviced apartment hotel which was permitted by the Council in October 2012. Floor plans and elevations of the hotel scheme have been provided showing that it has many similarities with the appeal scheme. Although the merits of the hotel scheme are not before me, this planning permission is a material consideration. However, there are important differences between the appeal scheme and the hotel scheme which bear directly on the main issues in this appeal. In the appeal scheme the area covered by the 4th floor is greater, the overall length (as seen from the churchyard) is greater and the degree of set back from the northern elevation is less. In addition, the gap between the 3rd floor and Wykeham Terrace is smaller.
26. The effects of these differences are that impacts on the settings of designated heritage assets and the living conditions of nearby residents would be materially greater if the appeal scheme were built than they would be if the hotel scheme were built. I note that the total volume of built development would be reduced and the roof of the 4th floor would be around 0.5m lower. However, these parameters are less important to the impacts I have identified than the factors referred to above. Consequently, whilst I take account of the hotel scheme, it does not change my conclusions on the merits of the appeal scheme.
27. The appeal scheme would deliver 31 residential units, including a proportion of affordable housing. It would also secure the redevelopment of a vacant and derelict site. These are important benefits weighing in favour of the appeal. Some local residents consider the scheme would be detrimental to the townscape of Queen Square. However, I consider that enclosing the northern side of the square would be beneficial in design terms.
28. A tree survey was submitted with the application. This notes that an elm tree within the churchyard would need to be cut back to accommodate the proposed development. Whilst this is a tree which contributes to the verdant character of the churchyard it overhangs the appeal site quite extensively. It seems likely that it would need to be reduced to enable any reasonable redevelopment of the appeal site to go ahead. Consequently this is not a matter which weighs against the appeal.
29. The owners of the commercial premises at 12 Queen Square are concerned about effects on daylight to windows and roof lights and about overlooking from balconies. Whilst I take account of these concerns, I consider that commercial properties are less sensitive than residential accommodation in these regards. Concerns are also raised regarding rainwater running off the proposed building. That appears to me to be a matter to be resolved between adjoining property owners. In any event, I do not think that these impacts would be so severe as to be important considerations in planning terms.
30. Several representations have been received from local amenity societies and residents. Many of the matters raised have been covered above. In addition, some residents are concerned that lowering the road level of part of Queen

Square could affect cellars under the road. Residents are also concerned about the adequacy of the sewerage system to accommodate additional development. The grant of planning permission would not interfere with the ownership of any underground structures which might be affected. Structural matters and the adequacy of drainage would be considered under other legislation.

31. With regard to the S106 Agreement, I have sought further information regarding regulation 123 of the Community Infrastructure Levy Regulations 2010³. As this information was not forthcoming at the time of writing, I do not know whether or not it would be permissible to take account of the contributions in my decision. However, as the appeal is to be dismissed on other grounds, which would not be affected one way or the other by the Agreement, it is not necessary for me to pursue this matter further.

Conclusion

32. In conclusion, the proposal would be harmful to the significance of the listed church, the listed terrace and the conservation area. These are matters to which I attach considerable importance and weight. I note that the appeal scheme would bring benefits in that it would deliver housing, including affordable housing, secure the redevelopment of a derelict site and improve the appearance of Queen Street. However, I see no reason to think that similar benefits could not be achieved with a design which did not have the adverse impacts I have identified. On balance, the benefits would not outweigh the harm to the significance of the heritage assets in question. I conclude that the proposal would not accord with the policies of the Framework relating to the historic environment.
33. The appellant draws attention to the housing land supply position in Brighton and Hove and refers to the presumption in favour of sustainable development set out in paragraph 14 of the Framework. However, the presumption is not engaged in circumstances where specific policies in the Framework, such as those relating to designated heritage assets, indicate that development should be restricted⁴. This is such a case.
34. The proposal would also be harmful to the living conditions of nearby residents.
35. I have considered all other matters raised but have found none that alter my conclusions on the main issues. For the reasons given above, the appeal should not be allowed.

David Prentis

Inspector

³ The transitional provisions relating to pooled obligations have come to an end since the Agreement was completed

⁴ See footnote 9 to paragraph 14