

Appeal Decision

Site visit made on 22 March 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 19 April 2016

Appeal Ref: APP/Q1445/W/15/3138676 73 North Road, Brighton BN1 1YD

- 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 Mr John Blake, Sussex Property Investments Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/00445, dated 9 February 2015, was refused by notice dated 19 August 2015.
 - The development proposed is the construction of a new part single storey/part two storey development to provide 299 sq metres of office space.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the application the proposal was amended by the substitution of a pitched roof with central ridge for the mansard roof originally proposed. I have dealt with the appeal on this basis and have accordingly deleted the reference to the mansard roof in the description of the proposed development which was on the application form.

Main Issues

3. The main issues are:
 - whether the proposal would preserve or enhance the character or appearance of the North Laine Conservation Area (CA); and
 - the effect of the proposal on the living conditions of the occupiers of Nos 40 - 46 Queens Gardens in relation to outlook, daylight, sunlight and privacy.

Reasons

Character and appearance

4. The appeal proposal is to construct a series of eight office units on a narrow rectangular site known as Diplocks Yard between Nos 40 – 46 Queens Gardens and Nos 40 – 42 Upper Gardner Street. These are two rows of terraced buildings with a variety of uses which back onto each other with the narrow site running between them. The site is accessed through an entrance under No 73 North Road at one end and is currently used as a flea market and covered by a low pitched roof of temporary construction.

5. The proposed office building would be about 7 m wide and about 38 m long, almost completely filling the width of the site. The building would be single storey to the eaves but would have a pitched roof with central ridge allowing a mezzanine floor for six of the eight units. Units 3 and 4, about a third of the way along, would be single storey with a sedum flat roof. There would be a pedestrian access way along the eastern (Upper Gardner Street) side and at the entrance a disabled toilet, refuse/recycling storage and cycle parking.
6. The site lies centrally within the North Laine CA which is characterised by an irregular grid iron street pattern of early nineteenth century terraced housing which today has a lively mixture of residential, shopping and commercial uses. It would seem historically that the yard was open and used for the storage of market barrows but in recent times it has become a covered flea market, the use being last revived in 2009.
7. This use of the site appears to have support locally and much of the discussion at the meeting of the Council's Planning Committee on 5 August 2015, when the application was refused, appears to have been concerned with the loss of the market. However, there is no detailed historical, conservation or policy justification before me to support such an objection in principle. The North Laine CA Study 1995 does not refer to the site, and neither the Council's Heritage Team nor the Conservation Advisory Group (CAG) object to its development. Whilst paragraph 23 of the National Planning Policy Framework (NPPF) invites local planning authorities to consider drawing up policies to retain and enhance existing markets, the Council have not pursued such a policy in this case.
8. There have also been two dismissed appeals relating to the site when the principle of development has not been in dispute. Both were for very similar proposals to the current scheme, although proposing different roof forms. The first was in 2009 (when the site was vacant) and the second in 2015¹.
9. The buildings along Queens Gardens and Upper Gardner Street on either side of the site are continuous and between two and four storeys high plus roofs when viewed from the street. The proposed building would therefore be unseen from either street and it would also be screened by No 73 from views down Tichborne Street. It might just be possible to glimpse the building through the entrance gates if left open. Consequently, the proposal would have no perceptible visual impact on the wider conservation area. It would however be seen in private views from the rear of the adjacent properties.
10. In this backland context the 2009 Inspector found no harm to the CA in a building of the scale proposed with a barrel roof, whilst the 2015 Inspector found the series of monopitch roofs then proposed would be very prominent features that would dominate the very confined space. The current proposal is for a simple slate pitched roof with central ridge which the Heritage Team find acceptable, although preferring a lower ridge height. In my view this common roof form reflects the surrounding North Laine CA. The flat roof section disrupts the design to some degree but would not be widely seen.
11. The Council are concerned by the height, scale, bulk and design of the building but do not elaborate, whilst the CAG regard the proposal as overdeveloping the site in a way which detracts from the character of the historic yard. If the site

¹ APP/Q1445/A/08/2086874 and APP/Q1445/A/14/2223048 respectively.

is to be developed in principle I see little substance in these rather unspecific objections. The building would not be visible from the surrounding streets and consequently would have no material effect on the appearance of the North Laine CA. In relation to the character of the CA as a busy commercial and residential district, the proposal would replace a market with offices which would increase employment in the area and continue to generate a significant level of activity, albeit of a different nature.

12. For these reasons I conclude that the proposal would preserve the character and appearance of the North Laine CA. It would therefore comply with Policy CP12 of the Brighton & Hove City Plan (Part 1) 2016 which seeks to ensure respect for the city's diverse character and urban grain. It would also comply with saved Policy HE6 of the Brighton & Hove Local Plan 2005 (the Local Plan) which requires proposals within a CA to show a high standard of design and detailing reflecting the scale, layout and building forms of the area, and to have no harmful effect on the townscape or roofscape.

Living conditions

13. Although not a reason for refusal raised by the Council, a number of objections have been made to the impact of the proposal on neighbouring occupiers. This was also a determinative issue in the case of the 2015 appeal.
14. The appeal site is bounded on one side by Nos 40 – 46 Queens Gardens, a line of terraced houses, and on the other by Nos 40 – 42 Upper Gardner Street, a range of buildings in a number of uses but including some flats. These flats are alongside the single storey section of the proposed building where the flat roof would effectively maintain their open aspect over the site.
15. On the other side Nos 40 - 46 Queens Gardens are a line of terraced houses which appear two storey from the street but have basements which give three storeys of accommodation at the rear. Some of these houses have small basement level courtyards, only about 3-4 m long, which back onto the tall wall forming the common boundary with the appeal site, whilst others have short rear extensions. Two have small roof terraces accessed from first floor level which overlook the appeal site.
16. Of these houses, Nos 44 and 45 would back onto the single storey section of the proposed building which would maintain their open aspect. However, Nos 40 – 43 and 46 would back onto a pitched roof section which would rise well above the existing boundary wall and significantly higher than the existing temporary low pitched roof cover.
17. During the site visit I was able to assess the impact of the proposal from the rear windows, basement courtyards and roof terraces of Nos 40 and 43, and from this to also judge the impact on Nos 41 and 42. The rear basement courtyards in all these cases are very small and highly enclosed by the boundary wall, which limits their amenity. Whilst the 2015 proposal with its monopitch roofs would have added to the sense of enclosure in these spaces, the roof in the current proposal would pitch away from behind the boundary wall, and as a result would be barely perceptible from within the courtyards.
18. However, from the rear facing windows at ground floor, first floor, and to a lesser extent basement level the steeply pitched roof would be very obvious rising above the boundary wall. The cross sections show that the ridge of the building would be about the same height as the eaves of Nos 40 – 43, and

because the rear courtyards are so short and the appeal site so narrow, the ridge would only be about 7 m back from the rear elevations. Consequently, the outlook from these windows would be significantly compromised and the rooms made less attractive places to live. Cross section CC also illustrates how the outlook from these windows would be affected.

19. These windows currently look out towards the rear elevations of Nos 40 – 42 Upper Gardner Street, but these buildings are further away and therefore less dominant. Significantly, the extra distance also allows a greater view of the sky above the buildings which is important to the ambience of the rooms concerned. Cross section DD shows the highest building on this part of Upper Gardner Street rather than the lower building to its north, and in isolation understates the impact of the proposed roof on the outlook from many of the rear windows in Queens Gardens.
20. The 2009 appeal involved a barrel roof but this was about 0.7 m lower to the ridge than the current proposal, a significant difference in the circumstances. The Inspector concluded that, without suitable reflective materials, there would be some loss of light harming neighbouring occupiers' amenities, but did not consider the separate issue of loss of outlook at all. In this case the appellant has submitted a Daylight, Sunlight and Overshadowing Report which predicts a reduction in both daylight and sunlight to some of the windows concerned, albeit from an existing low level. Although the reductions broadly meet the relevant BRE guidance², this illustrates the loss of outlook from these windows (in terms of sky at least).
21. The outlook from the small roof terraces behind Nos 40 and 43 would be less seriously affected because they offer an all round wider view of the sky than the rear windows, and from a high level. In relation to privacy, the proposal would involve a series of low level and ridge level rooflights, but these would be at a high level within the offices and thus not a cause for concern.
22. For these reasons I conclude that the proposal would significantly harm the living conditions of the occupiers of Nos 40 – 43 Queens Gardens in relation to outlook. This would be in conflict with Policy QD27 of the Local Plan which precludes development where it would cause material nuisance and loss of amenity to adjacent residents and occupiers.

Conclusion

23. Although the proposal would preserve the character and appearance of the North Laine Conservation Area it would cause significant harm to the living conditions of the occupiers of Nos 40 – 43 Queens Gardens in relation to outlook. Consequently, notwithstanding the benefits of the proposal in terms of modern office floorspace, regeneration, local employment and its sustainable location, the appeal should be dismissed.

David Reed

INSPECTOR

² "Site Layout Planning for Daylight and Sunlight, a Guide to Good Practice" - Building Research Establishment Ltd.