
Appeal Decision

Site visit made on 9 August 2016

by **Alex Hutson MATP CMLI MArborA**

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

Decision date: 19 August 2016

Appeal Ref: APP/Q1445/W/16/3149148

2 Clarence Square, Brighton, Brighton and Hove BN1 2ED

- 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 and Mrs A M Taheri-Kadkhoda and Mr and Mrs A Abrahams against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/03648, dated 10 October 2015, was refused by notice dated 1 April 2016.
 - The development proposed is rear roof terrace.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. Subsequent to the date of the Council's decision notice, the Council adopted the Brighton and Hove City Plan Part One in March 2016 (the City Plan). Nevertheless, the policies of the City Plan do not supersede the saved policies of the Brighton and Hove Local Plan 2005 (Local Plan) referred to on the Council's decision notice and these saved policies continue to form part of the development plan for the City. I have considered the appeal on this basis.
3. The description of the proposed development on the Council's decision notice includes, in addition to the creation of a roof terrace, the replacement of an existing window with a new door to access the roof terrace. This is reflected on the submitted plans. I have therefore considered the appeal on this basis.

Main Issues

4. The main issues are whether the proposal would preserve or enhance the character or appearance of the Regency Square Conservation Area; and the effects on the living conditions of the occupiers of neighbouring properties with particular regard to privacy and noise.

Reasons

Conservation area

5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that with respect to development affecting buildings or other land in a conservation area, "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that
-

- area.” In addition, Paragraph 132 of the National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation.
6. Clarence Square lies on the eastern edge of the Regency Square Conservation Area (RSCA) and terraced dwellings, including 2 Regency Square, which date from around 1850, are laid out formally around a central public garden. Dwellings are typically three storeys in height with basements and display a strong level of uniformity within the streetscape.
 7. No 2 lies on the eastern side of Clarence Square and backs onto a prominent concrete ramp that leads to a rooftop car park associated with a large shopping centre. The Council accepts that the presence and appearance of the ramp has greatly compromised the setting of the rear of the terraces that No 2 forms part of. From my observations, I would concur with the Council on this matter. I also observed that the rear elevations of some of the terraced dwellings along this part of Clarence Square that back onto the ramp, have been subject to alterations in the past and display little coherence or uniformity.
 8. The exception to this is the rear elevation of Nos 2 and 3 which share a distinctive, traditional rear outrigger which incorporates a pitched roof and a gable end. Whilst not an original part of these dwellings, the rear outrigger, dating from the late 19th century, forms part of the historical development of these dwellings. The rear outrigger is a prominent feature in views from the east when approaching the RSCA and maintains a good level of uniformity between Nos 2 and 3. Whilst part of the pitched roof nearest the rear elevation of No 2 has been removed in the past, I do not consider that this alteration substantially changes the prominence or the uniformity of the rear outrigger in views from the public realm. The prominence and uniformity of the rear outrigger therefore positively contributes to the character and appearance of the host buildings and the RSCA.
 9. The proposal seeks to remove the remainder of the pitched roof and most of the gable end to create a roof terrace with a surrounding parapet. Access would be provided to the roof terrace by the replacement of a non-historic window with a door. The Council raises no concerns in respect of the replacement of this window with a door given it is not an original feature of the house. I would concur with the Council on this matter.
 10. Nevertheless, the loss of the pitched roof and traditional gable end profile and the formation of a parapet would considerably unbalance the appearance of the rear outrigger of Nos 2 and 3. This would fail to maintain the important level of uniformity that exists between these two dwellings and would be clearly apparent in views from the public realm. I therefore consider that the proposal would fail to preserve or enhance the character or appearance of the RSCA. However, in the context of the RSCA as a whole, I consider the harm arising to the significance of the RSCA designated heritage asset would be less than substantial.
 11. As required by paragraph 134 of the Framework, I must therefore consider whether there are any public benefits that outweigh the less than substantial harm identified above. However, I have not been presented with any compelling evidence from the appellant to this effect. I acknowledge the appellant’s argument that a level of private amenity space would enhance the

overall living conditions of any occupiers of No 2. Nevertheless, whilst this may be the case, this would not be a matter that would provide any significant benefit for the wider public.

12. I therefore conclude that the proposal would fail to preserve or enhance the character or appearance of the RSCA contrary to the requirements of s72(1) of the Act and that the harm identified, albeit less than substantial, would not be outweighed by public benefits as required by paragraph 134 of the Framework. The proposal would also be contrary to saved Policies QD14- Extensions and Alterations and HE6- Development Within of Affecting the Setting of Conservation Areas, of the Local Plan. These policies require, amongst other things, development to be well designed in relation to the host property and adjoining properties, to respect the character of the surrounding area and to preserve or enhance the character or appearance of the conservation area, including in respect of its development pattern, townscape and roofscape.
13. The proposal would also be contrary to the guidance of the Brighton and Hove Design Guide for Extensions and Alterations Supplementary Planning Document No. 12 adopted 2013 (SPD) which advises that development should not detract from the original building or the character of an area and that roof terraces will in most cases be unacceptable in prominent locations visible from the street because of their negative impact on the appearance of the building and streetscape.

Living conditions

14. I observed that the rear outrigger of No 1 has two windows that face in a southerly direction towards the rear outrigger of No 2. Nevertheless, these windows do not appear to serve the main habitable rooms of the flats within No 1 and therefore privacy requirements in respect of these rooms is likely to be substantially reduced. Furthermore, any overlooking of these windows by users of the proposed terrace would be from a higher level and therefore from an angle that would be unlikely to allow any significant views into these rooms.
15. In addition, the angle of view obtained from the proposed roof terrace towards any windows to main habitable rooms on the eastern elevation of No 1, combined with the generous separation distance between the proposed roof terrace and these windows would, in my opinion, limit any opportunity for any users of the roof terrace to obtain any significant views into these windows.
16. The generous separation distance between the proposed roof terrace and any windows in the eastern elevation of No 1, would, in my opinion substantially limit any harmful effects in respect of noise and disturbance for the occupiers of the flats within No 1.
17. I therefore conclude that the proposal would maintain acceptable living conditions for the occupiers of flats within No 1 in respect of privacy and noise and disturbance.
18. The proposal would therefore comply with saved Policies QD14 and QD27- Protection of Amenity, of the Local Plan. These policies require, amongst other things, development to respect the amenities of neighbouring properties including in respect of privacy and noise and disturbance.

Other matters

19. I acknowledge third party concerns in respect of loss of light. Nevertheless, the Council did not raise any concerns on living conditions grounds beyond those matters relating to privacy and noise and disturbance. Based on the evidence before me and my own observations, I am satisfied that the proposal, given the modest height of the proposed parapet, would not cause any undue loss of either sunlight or daylight to neighbouring properties.

Conclusion

20. Whilst I have not found harm to neighbour living conditions, I have found that the proposal would fail to preserve or enhance the character or appearance of the RSCA. The harm so caused would not be outweighed by public benefits. Therefore, for the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR