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## Appeal Decision

Site visit made on 10 May 2018

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 June 2018

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**Appeal Ref: APP/Q1445/W/18/3192794**

**Lower Ground Floor, Flat 54 Brunswick Square, Hove BN3 1EF**

- 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 Gordon Winter against the decision of Brighton & Hove City Council.
  - The application Ref BH2016/06313, dated 2 December 2016, was refused by notice dated 6 October 2017.
  - The development proposed is the conversion of an existing lower ground floor flat (C3) to 2no flats (C3) with associated alteration to fenestration. Removal of metal fire escape and addition of a metal balustrade at ground floor level.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appeal property is part of a Grade I Listed Building. However, the works associated with the appeal scheme in this case received conditional listed building consent from the Council<sup>1</sup>.
3. In the banner heading above I have used the description of development as it appears on the Council's Decision Notice, rather than the one on the application form<sup>2</sup>. The description used above accurately captures the scope of the proposed development; and the address of the appeal property and the nature of the permission applied for are clear from elsewhere within the banner heading.

### Main Issues

4. The main issues in this case are firstly, the effect of the proposed development on the living conditions of its future occupants in terms of privacy; and secondly, whether the proposed development would result in the loss of a smaller dwelling suitable for family housing.

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<sup>1</sup> Council reference: BH2016/06314

<sup>2</sup> Which is "Full Planning and Listed Building Consent for 2 proposed residential units in lieu of 1 existing unit including internal and external alterations at lower ground floor level at 54 Brunswick Square, Hove, BN3 1EF."

## Reasons

### *Living Conditions*

5. The proposed development, as described above, would result in the sub-division of a lower ground floor flat into two separate one-bedroom units. One at the front of the property and one at the back both accessed via a communal hallway from the front door. The large multi-light window of the front unit's bedroom would overlook a central courtyard area, which would also be close to the bathroom window of the proposed flat to the rear. The courtyard could be accessed by a door within the area under the control of the rear flat.
6. Due to the intimacy of the courtyard's relationship with the large window of the proposed bedroom of the front flat, its use as an amenity area in association with the rear flat would result in a high degree of intrusive overlooking, and this would clearly fail to provide an adequate level of privacy to the front flat's future occupants. Moreover, the installation of obscure glazing would substantially restrict the outlook available from the bedroom window, and could require listed building consent- and I have no material before me to suggest that such consent would be forthcoming. Consequently, I consider that obscure glazing would not provide a practical solution to address these privacy effects in this case.
7. However, the National Planning Policy Framework (the Framework) states<sup>3</sup> that decision-takers should consider whether otherwise unacceptable development could be made acceptable through the use of planning conditions. Consequently, I am mindful of the appellant's view that the access to the courtyard could be restricted so that it would not be used as amenity space and only for maintenance purposes.
8. The Framework also establishes, however, that conditions should only be attached where, amongst other things, they are enforceable. In this case, given the position of the courtyard within the centre of the appeal property it is effectively shielded from publically accessible views. As a result of this positioning, I am not persuaded that a condition restricting access to the courtyard would be enforceable. Consequently, I consider that such a condition would not provide a means to overcome the proposed development's manifestly harmful privacy effects.
9. Whilst I note the freeholder's intention to retain the key to the courtyard as a way of restricting its use, no legally enforceable mechanism has been supplied with the appeal documents which would secure this intention. Therefore, it is far from certain at this stage that access to the courtyard would be restricted.
10. Consequently, the proposed development would cause harm to the living conditions of its future occupants in terms of privacy, and would in these terms conflict with Policy QD27 of Brighton and Hove's Local Plan (adopted July 2005) (the Local Plan). Amongst other matters, this policy seeks to ensure that the amenity of the proposed users of developments is protected.

### *Family Housing*

11. Policy HO9 of the Local Plan relates to residential conversions and sets out, amongst other criteria, that conversion of dwellings into smaller units will only

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<sup>3</sup> At paragraph 203

be permitted where the original floor area is greater than 115 SqM. Conversions must provide at least one property suitable for family accommodation, unless, amongst other exceptions, the proposal would be poorly located to meet the needs of families.

12. The appellant estimates that the original floor space of the appeal property, excluding the storage areas to the front and within the central courtyard to be around 129 SqM. I note that the Council considers rooms to the rear of the appeal property to be additions that do not comply with the definition of 'original floorspace' given in the Local Plan. Nevertheless it is clear that these rooms, annotated as 'Boiler room' and 'Bedroom 1' on the Existing Floor Plans drawing<sup>4</sup>, are of some age and have a clear functional relationship to the building as a whole- attested to not least by the presence of the large chimney breast, apparently previously associated with a substantial kitchen range in "Bedroom 1". Moreover, there is a notable similarity in layout between the appeal property and other adjacent ones within the Square which further emphasises the long-standing nature of its rear rooms. Consequently, I consider that it has not been established that the rear rooms are later additions to the original floorspace, and in arriving at this view I am mindful of the evidence submitted by the appellant from the curator of the Regency Town House at 13 Brunswick Square, insofar as this states that the appeal property's basement "displays a very typical Brunswick Town layout". Accordingly, for these reasons, I find that the appeal scheme would meet the floorspace criteria of Policy HO9.
13. The appeal property is located at a subterranean level and accessed by stairs, which would limit its attractiveness for family occupation, particularly for younger families with pushchairs and so forth. In these regards, I note the appellant's observation that a considerable number of basements in the Square are converted to flats partly due to these reasons. Consequently, I find that the appeal property is poorly located to meet the needs of families, and thus would meet the exception to the requirement to provide family housing set out within Policy HO9.
14. Accordingly, taking these matters together leads me to the conclusion on this main issue that the proposed development would not result in the loss of a dwelling suitable for family housing and would therefore not conflict with Policy HO9 of the Local Plan insofar as it seeks to manage residential conversions, and protect the supply of smaller family houses.

### **Other Matters**

15. The above-referenced listed building consent established that the proposed works in association with the appeal scheme would preserve the building and its special interest. I saw nothing on-site or within the plans to lead me to different conclusions in this regard. Accordingly, mindful of the duty arising from section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I conclude that the proposed development would preserve the listed building and its special architectural and historic interest. Moreover, the external changes mooted by the proposal would be minor in nature, and sensitive to its character and fabric. Therefore, mindful of the duty arising from section 72(1), I conclude that the character and appearance of Brunswick Town Conservation Area would be preserved.

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<sup>4</sup> Reference M 111/02 Revision A

16. Notwithstanding these considerations, it has not been demonstrated that the proposed development is the only way to secure the significance and special interest of the building, or that other uses would not share its level of effect in these heritage regards. Consequently, the proposed development's heritage aspects carry only moderate weight in the overall planning balance. In arriving at this view, I am mindful of the appellant's comments regarding their intention to secure the future of the property, and that they had taken it on after a lengthy period of vacancy; and the assertions regarding the repair and management of some other properties in the vicinity.
17. The appellant makes references to the Council's handling of the planning application that led to this appeal. However, this is essentially a procedural matter which does not have a bearing on the planning merits of the appeal.

### **Conclusion**

18. The proposed development would not conflict with Policy HO9 of the Local Plan insofar as it seeks to restrict residential conversions. However, this only evidences an absence of harm in these regards rather than a positive benefit of the scheme and accordingly has only a neutral effect on the overall planning balance. Whilst I have found that the appeal scheme's heritage aspects would weigh moderately in its favour, the harm that it would cause to the living conditions of its future occupants, a matter to which I attach considerable weight, clearly tips the balance against its approval.
19. Consequently, no material considerations have been advanced in favour of the scheme that would support a development other than in accordance with the development plan with which, in terms of Policy QD27 of the Local Plan, it clearly conflicts.
20. Therefore, for the above reasons, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*G J Fort*

INSPECTOR