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## Appeal Decisions

Site visit made on 9 February 2015

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 13 February 2015

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### **Appeal A: APP/Q1445/A/14/2221184**

#### **13A - 14 Stone Street & 19A Castle Street, Brighton BN1 2HB**

- 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 Just Developments Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/02798, dated 14 August 2013, was refused by notice dated 7 April 2014.
  - The development proposed is refurbishment and conversion of the existing Grade II two storey Stone Street building into a single private dwelling and the demolition and redevelopment of the Castle Street part of the site into a three-storey student accommodation block comprising of 14No *en-suite* bedrooms together with two communal kitchens.
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### **Appeal B: APP/Q1445/E/14/2221198**

#### **13A - 14 Stone Street & 19A Castle Street, Brighton BN1 2HB**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Just Developments Ltd against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/02799, dated 14 August 2013, was refused by notice dated 7 April 2014.
  - The works proposed are refurbishment and conversion of the existing Grade II two storey Stone Street building into a single private dwelling and the demolition and redevelopment of the Castle Street part of the site into a three-storey student accommodation block comprising of 14No *en-suite* bedrooms together with two communal kitchens.
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#### **Decision Appeal A**

1. I allow the appeal and grant planning permission for refurbishment and conversion of the existing Grade II two storey Stone Street building into a single private dwelling and the demolition and redevelopment of the Castle Street part of the site into a three-storey student accommodation block comprising of 14No *en-suite* bedrooms together with two communal kitchens at 13A - 14 Stone Street & 19A Castle Street, Brighton BN1 2HB in accordance with the terms of the application, Ref BH2013/02798, dated 14 August 2013 subject to conditions 1) to 22) on the attached schedule.

#### **Decision Appeal B**

2. I allow the appeal and grant listed building consent for refurbishment and conversion of the existing Grade II two storey Stone Street building into a

single private dwelling and the demolition and redevelopment of the Castle Street part of the site into a three-storey student accommodation block comprising of 14No *en-suite* bedrooms together with two communal kitchens at 13A - 14 Stone Street & 19A Castle Street, Brighton BN1 2HB in accordance with the terms of the application Ref BH2013/02799, dated 14 August 2013 and the plans submitted with it subject to conditions 1) to 11) on the attached schedule.

### **Main Issue**

3. This is, in both appeals, the effect of the proposals on the architectural or historic significance of the listed building and on the character and appearance of the Regency Square Conservation Area.

### **Reasons**

#### *Generally*

4. Saved Local Plan Policy HE1 provides for the alteration, extension or change of use of a listed building where the proposal would not have any adverse effect on the historic or architectural character and it respects the scale, design, materials and finishes of the building. Policy HE2 concerns the demolition or major alteration of a listed building, with criteria to be met and Policy HE6 details requirements for development within a conservation area. Design quality and the relationship with the neighbourhood are the subjects of Policies QD1 and QD2. The Council have also supplied copies of supplementary planning guidance and documents on listed buildings and conservation matters.
5. The Historic Environment policies are in line with the requirements of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and section 72(1) of the same Act that special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 132 of the National Planning Policy Framework states 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. The listed building consists of the range fronting Stone Street which is the principal listed building and the one on which English Heritage based the decision to list due to its historic and architectural significance; and the range of buildings on Castle Street which are in poor order, and was not considered by English Heritage to be worthy of listing in their own right due to the lack of horse-related items, later harmful interventions and not being of sufficient interest. That range is nevertheless a curtilage listed structure. It is of particular note that the Stone Street range, the principal listed building, is on the Council's Buildings at Risk register.
7. There is support in representation to the application and the appeal, for the works to the Stone Street range and the formation of the 'cottage', and that is understandable since it brings back into a beneficial use a building that is of historic interest, is at risk of being lost and is in a location close to shops, transport and other facilities. The Council raises no objection to this work. The loss of the curtilage structure is objected to in representation, whereas the

Council's stance is that the quality of the proposed replacement building on Castle Street is insufficient to justify that loss, and this is not an 'in principle' objection to removal of the curtilage structures.

*Listed Building and Conservation Area*

8. By reason of its architectural and historic interest, the poor state and the risk of further loss, the conversion of the Stone Street range as proposed is acceptable in principle and in detail. The original stables use would not be likely to be reinstated in any event and residential use as proposed would have limited effect on the architectural and historic significance of the building, and would secure its long term preservation. Such a use would be compatible with the other uses in the immediate vicinity which include recent residential development along with longer-established terraced dwellings. The works would preserve the interest of the listed building and would preserve the character and appearance of the conservation area. That character and appearance would be enhanced to the extent that the present state of the site detracts.
9. As stated, the structures to the Castle Street frontage are of more limited architectural or historic interest, although their removal is controlled through being curtilage listed structures and the proposal being substantial demolition in a conservation area. It is clear through submissions from the appellant that in order to secure the highly beneficial repair and re-use of the Stone Street principal listed buildings, removal of these curtilage structures is necessary. There is no economic case for their retention, repair and re-use generating the necessary funds for the principal listed building, and it is reasonable that some form of new building and new use would be required on this part of the site to generate those funds.
10. The loss of the curtilage listed structures would cause harm to the significance of the listed building as a whole and to the historic character of the conservation area. Having regard to the nature of the buildings and English Heritage comments on their value, and their resulting status of not being listed in their own right, this harm should be regarded as being 'less than substantial' a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The works of demolition coupled with redevelopment of the site is designed to secure a viable use of the principal listed building and in view of local support for that aspect, and no comments to the contrary, this could well be the optimum use commensurate with its preservation. Public benefits will be balanced later in this Decision after consideration of the merits or otherwise of the replacement building.
11. The use for student accommodation appears to provide the necessary funding for the overall scheme including the repair works, and that is not the case with another alternative favoured in representation, of a terrace of three houses. Whilst there has been comment on the need for such accommodation, the site is in a central location in a mixed-use area with much commercial use along Preston Street and Western Road. The proposed use would not have an

- unacceptable impact on the character and appearance of the area and would not be incompatible with the surrounding uses.
12. This brings the Decision to the Council's reasons for refusal, that because of its height, massing, density, scale, building line and materials, and through being an incongruous feature in the street scene, the building would fail to preserve or enhance the character or appearance of the Regency Square Conservation Area. In the listed building consent the reason was that there was not an acceptable proposal for redevelopment.
  13. The proposed building takes up a position on the Castle Street frontage similar to most others along this side, the main exception being the buildings of the appeal site itself. The present arrangement no doubt suited the historic and later uses having an open yard, but is not necessary in the proposed new use, and is not needed to maintain a historic pattern of development. A building line similar to those either side is appropriate. The height mediates between the higher buildings on Preston Street and the lower one to the east, the arrangement of windows and their heights is similar to those in the terrace next along in that direction and the proposed materials match those commonly used along the street. It is appropriate to build at full width on the plot and that again is common on the street. This combination of acceptable width and height leads to an acceptable massing and scale. The density of development is influenced in addition by the depth, which is to the rear of the remaining principal listed building but with a courtyard to the west side. Such a density of development makes best use of land in a city-centre location, and 14 *en-suite* bedrooms together with two communal kitchens does not appear an over dense development in this location.
  14. That leaves the impact of these matters on the street scene, through the articulation of planes, fenestration and the like. The new building would have a flat roof, but parapets and low-pitched roofs are not uncommon and in many instances nearby the roof slopes even where a conventional eaves is used, are not readily visible. The flat roof allows the unobtrusive positioning of solar panels. From the drawings it appears that strictly the roof line of the Castle Street block should appear in the background of the Stone Street elevation, but from the sections it is apparent that the height of the listed building's ridgeline would limit the view of the building behind from ground floor level.
  15. The Conservation Officer had commented on aspects of the front elevation to Castle Street in earlier iterations of the design and these comments had been acted upon. Certainly the façade treatment is understated, but it draws on traditional proportions of solid to void. In this location it is appropriate that the new building should blend in rather than stand out, and the building may be described as displaying good manners among the truly historic elements of the conservation area rather than appearing as a copy.
  16. In conclusion, the repair and beneficial use of the principal listed building is a significant benefit and would remove it from the buildings at risk register. That is brought about by the redevelopment of the Castle Street frontage, but at the loss of the curtilage listed building. However, the development economics appear to rule out retention of the building, or a family residential redevelopment, and conditions can be used to ensure that the repair is carried out. The proposed overall development would conserve the character and appearance of the conservation area, and enhance it compared with the

present situation, and would preserve the significance of the principal listed building. The less than substantial harm caused to designated heritage assets by the loss of the curtilage listed structures would be decidedly outweighed by the public benefits of the proposal. The aims of Development Plan policies, national guidance and the statutory tests would be met.

### **Conditions and Undertaking**

17. The Council had put forward a number of conditions in each appeal and the appellant had commented on the appropriateness of some of these. On the planning appeal there are conditions proposed controlling the rooflights, render, the location of cables and the like, rainwater goods, hard surfacing, cycle parking, refuse storage, levels, materials, waste minimisation and the making good of the existing crossover. These are all required to ensure the standard of the development, the delivery of desirable features and to control the effect on the character and appearance of the area. The Council require the new dwelling on Stone Street to be designed to the Lifetime Homes standard which is reasonable in compliance with Policy HO13. In view of the previous use of the site for a builder's yard, there could be a risk of contamination and hence a condition as suggested for investigation and remedial work is required.
18. The appellant has reservations over the viability of meeting the BREEAM rating sought in two of the conditions. A condition requiring details of sustainability provisions with regard to the listed building appears reasonable, and having mind to the status of the guidance referred to in the BREEAM reasoning, the more open-ended condition on sustainability measures should be extended to the new-build block also. In any event this block would need to reach Building Regulation insulation standards. A condition seeking to restrict access for the students to a parking permit is reasonable and does not overlap with the stated content of the Management Plan in the Undertaking although that document could contain the detail.
19. The Council propose removal of permitted development rights to insert new windows and other openings, being concerned to protect the amenities of occupiers of nearby properties. Whilst the dwellinghouse is still a listed building and consent would be required for such work, the consideration then would be with regard to the interest of the building rather than neighbours, and so this restriction appears reasonable. Lastly in the planning permission a condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.
20. With regard to the listed building consent, the need for conditions apply with regard to render, cables, rooflights, rainwater goods and materials generally, added to which there is a need for the retention of architectural features at Stone Street, and for large scale details of the listed building work, in order to ensure the quality of those works.
21. The loss of the curtilage listed building is justified, as set out in the Reasons to this Decision, by the total scheme that includes the repair and bringing back into the use of the principal listed building. The Council have suggested a condition in the planning appeal to prevent demolition until building contracts have been entered into for the re-development. That is correct insofar as it

protects the building from premature demolition, but that condition should also be added to the listed building consent as that also covers the demolition, and should make clear the link to the repair works, in case there are two contracts, one for the straightforward new building and another for the more specialist repair works. In addition, as is usual with the loss of a listed building, recording should be undertaken, which may already have happened to inform the proposal to demolish, but should be secured by condition.

22. The Undertaking provides for a payment towards sustainable transport that can be traced back through application representation, and the requirement for a management plan to ensure that the use of the student accommodation and the comings and goings associated with it do not cause harm to the amenities of nearby residents. This undertaking satisfies the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 being necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. As a result, full weight can be accorded it in this Decision.

### **Conclusions**

23. The scheme should be seen as a whole, and in that light the development of a building to the Castle Street frontage that preserves the character and appearance of the Regency Square Conservation Area and provides for the repair of the principal listed building is an acceptable total scheme, with conditions to ensure the delivery of the repairs. The loss of curtilage listed structures is justified in that case. The scheme would satisfy the requirements at local and national level on the preservation of designated heritage assets and for the reasons given above it is concluded that the appeal should be allowed.

*S J Papworth*

INSPECTOR

## SCHEDULE OF CONDITIONS

### Appeal A, Planning Permission

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings; 0609/504/1, /2, /3, 8647/01b, /02e, /03e, /04d, /05f, /06a, /07a, /08a, /10a, /11b.
- 3) The rooflights hereby approved shall have steel or cast metal frames fitted flush with the adjoining roof surface and shall not project above the plane of the roof.
- 4) The west facing rooflights for the Stone Street building adjacent 57 & 58 Preston Street shall be obscured glazed and thereafter retained as such.
- 5) The render to the Castle Street building shall be smooth rendered down to ground level and shall not have bell mouth drips above the damp proof course or above the window openings and the render work shall not use metal or plastic expansion joints, corners or edge render beads.
- 6) No cables, wires, aerials, pipework (except rainwater downpipes shown on the approved plans) meter boxes, ventilation grilles or flues shall be fixed to or penetrate any external elevation, other than those shown on the approved drawings, without the prior consent in writing of the Local Planning Authority.
- 7) All new and replacement rainwater goods, soil and other waste pipes shall be in cast iron to match existing and shall be painted to match the colour of the background walls and retained as such thereafter.
- 8) Any re-rendering to the Stone Street building and front boundary wall will be smooth rendered in a cement/lime/sand render mix down to ground level and shall be lined out with ashlar joint lines to match the original building and shall not have bell mouth drips above the damp proof course or above the window, door and archway openings and the render work shall not use metal or plastic expansion joints, corner or edge render beads and shall be painted in a smooth masonry paint to match the original building and shall be maintained as such thereafter.
- 9) The new Stone Street dwelling hereby permitted shall be constructed to Lifetime Homes standards prior to first occupation and shall be retained as such thereafter.
- 10) The hard surface hereby approved shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows, rooflights or doors other than those expressly authorised by this permission shall be constructed without planning permission obtained from the Local Planning Authority.
- 12) The development hereby permitted shall not be commenced until details of sustainability measures for the new dwelling fronting Stone Street and the

student accommodation fronting Castle Street have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how the development would be built and occupied to be efficient in the use of energy, water and materials. The development shall be carried out in strict accordance with the approved details and the measures retained thereafter.

- 13) The works of demolition to the buildings on Castle Street hereby permitted shall not be begun until documentary evidence is produced to the Local Planning Authority to show that contracts have been entered into by the developer to ensure that building work on the site the subject of this consent, including the repairs and conversion of the principal listed building, is commenced within a period of 6 months following commencement of demolition in accordance with a scheme for which planning permission has been granted.
- 14) The student accommodation hereby permitted shall not be occupied until the repairs and conversion of the principal listed building have been completed and the dwelling is available for use, or in accordance with some other timetable that has been agreed with the Local Planning Authority prior to the commencement of development including demolition.
- 15) The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.
- 16) The development hereby permitted shall not be commenced until there has been submitted to and approved in writing by the Local Planning Authority:
  - (a) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk top study in accordance with BS10175:2001; and, unless otherwise agreed in writing by the Local Planning Authority,
  - (b) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include the nomination of a competent person to oversee the implementation of the works.

The development hereby permitted shall not be occupied or brought into use until there has been submitted to the Local Planning Authority verification by the competent person approved under the provisions of (b) above that any remediation scheme required and approved under the provisions of (b) above has been implemented fully in accordance with the approved details (unless varied with the written agreement of the Local Planning Authority in advance of implementation). Unless otherwise agreed in writing by the Local Planning Authority such verification shall comprise:

  - (c) as built drawings of the implemented scheme;
  - (d) photographs of the remediation works in progress; and



(e) certificates demonstrating that imported and/or material left in situ is free from contamination.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under (b) above.

- 17) No development shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
- 18) The development hereby permitted shall not begin until such time as a scheme has been submitted to and approved in writing by the Local Planning Authority to provide that the residents of the student accommodation, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to a resident's parking permit.
- 19) No development shall commence until full details of the existing and proposed land levels of the proposed student accommodation in relation to Ordnance Datum and to surrounding properties have been submitted to and agreed in writing by the Local Planning Authority. The details shall include finished floor levels. The development shall be constructed in accordance with the agreed details.
- 20) No development shall take place until samples of the materials (including render) to be used in the construction of the external surfaces of the works hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details.
- 21) Notwithstanding the submitted details, no development shall take place until a written Waste Minimisation Statement, in accordance with Supplementary Planning Document 03: *Construction and Demolition Waste*, confirming how demolition and construction waste will be recovered and reused on site or at other sites has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in strict accordance with the approved details.
- 22) Prior to the first occupation of the development hereby permitted the redundant vehicle crossovers to Castle Street and partly to Stone Street shall be reinstated back to a footway by raising the existing kerb and footway in accordance with a specification that has been approved in writing by the Local Planning Authority.

#### Appeal B, Listed Building Consent

- 1) The works hereby authorised shall begin not later than three years from the date of this consent.
- 2) The developer shall give the Local Planning Authority 21 days advance notice of the start of any demolition works to the curtilage listed building and, for a period of 14 days before any work begins, reasonable access to that building shall be given to a person or body nominated by the Local Planning Authority for the purpose of recording the building by making measured drawings or taking photographs, unless the Local Planning Authority has previously stated its acceptance of any material submitted by the developer having the same recording effect.

- 3) The render to the Castle Street building shall be smooth rendered down to ground level and shall not have bell mouth drips above the damp proof course or above the window openings and the render work shall not use metal or plastic expansion joints, corners or edge render beads.
- 4) No cables, wires, aerials, pipework (except rainwater downpipes shown on the approved plans) meter boxes, ventilation grilles or flues shall be fixed to or penetrate any external elevation, other than those shown on the approved drawings, without the prior consent in writing of the Local Planning Authority.
- 5) All existing architectural features of the principal listed building including windows, doors, architraves, skirtings, dados, picture rails, panel work, fireplaces, tiling, corbelled arches, cornices, decorative ceilings and other decorative features shall be retained except where otherwise agreed in writing with the Local Planning Authority.
- 6) The rooflights hereby approved shall have steel or cast metal frames fitted flush with the adjoining roof surface and shall not project above the plane of the roof.
- 7) All new and replacement rainwater goods, soil and other waste pipes shall be in cast iron to match existing and shall be painted to match the colour of the background walls and retained as such thereafter.
- 8) Any re-rendering to the Stone Street building and front boundary wall will be smooth rendered in a cement/lime/sand render mix down to ground level and shall be lined out with ashlar joint lines to match the original building and shall not have bell mouth drips above the damp proof course or above the window, door and archway openings and the render work shall not use metal or plastic expansion joints, corner or edge render beads and shall be painted in a smooth masonry paint to match the original building and shall be maintained as such thereafter.
- 9) No works shall take place until samples of the materials (including render) to be used in the construction of the external surfaces of the works hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.
- 10) No works shall take place to the principal listed building until full details of the proposed works including 1:20 scale sample elevations and 1:1 scale joinery profiles of the doors, garage doors, windows (including cills and reveals), parapet, boundary walls, railings and stair have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter.
- 11) The works of demolition to the buildings on Castle Street hereby permitted shall not be begun until documentary evidence is produced to the Local Planning Authority to show that contracts have been entered into by the developer to ensure that building work on the site the subject of this consent, including the repairs and conversion of the principal listed building, is commenced within a period of 6 months following commencement of demolition in accordance with a scheme for which planning permission has been granted.