



Appeal Decision

Site visit made on 27 November 2018

by **David Richards BSocSci DipTP MRTPI**

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

Decision date: 7th December 2018

Appeal Ref: APP/Q1445/W/18/3198518

Old College House, 8 - 10 Richmond Terrace, Brighton, BN2 9SY

- 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 B W Surtees against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/03363, dated 5 October 2017, was refused by notice dated 29 January 2018.
 - The development proposed is conversion of existing basement storage area into 1 one bedroom flat (C3) with associated alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the living conditions of future occupiers, with reference to the availability of natural lighting, ventilation and outlook, and the effect on the living conditions of neighbouring occupiers, with particular reference to noise and disturbance.

Reasons

3. The Old College House is a Grade II listed building which was converted to flats more than a decade ago. The development proposed is the conversion of a series of spaces in the basement which previously formed the boiler room, together with fuel storage tanks. The Council has no objection to the principle of conversion, or to the effect on the Listed Building. Listed Building Consent has been granted for the scheme. However the Council considers that the scheme would create poor living conditions for potential occupiers, and would harm the living conditions of neighbours. A number of objections were received in response to the planning application, concerned with the suitability of the space for residential accommodation, lack of daylight to the proposed apartment, loss of useful storage space and noise and disturbance during construction, amongst other things
4. The development plan includes the Brighton and Hove City Plan Part One adopted February 2016 (the CP) and the saved policies of the Brighton and Hove Local Plan 2005 (the BHLP). Policy CP8 of the CP requires new developments to incorporate sustainable design features to help deliver reductions in greenhouse gas emissions, and protect occupants health and the wider environment by making best use of site orientation, building form,

layout, landscaping and materials to maximise natural light and heat, amongst other things. Saved Policy QD27 of the Brighton and Hove Local Plan (BHLP) states that planning permission for any development or change of use will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Saved Policy SU10 of the BHLP states that proposals for new development will be required to minimise the impact of noise on the occupiers of proposed buildings, neighbouring properties and the surrounding environment. These saved policies are broadly consistent with the advice in the NPPF regarding the protection of residential amenity, and carry considerable weight in accordance with paragraph 213 of the NPPF.

5. As part of the scheme, it is proposed to create three new window openings, and it appears that the repositioned door to the escape stair would be glazed. These openings would introduce additional light to the living space and the only light to the proposed bedroom.
6. In my judgement, the outlook from the proposed flat would be very poor. Two principal windows would look out onto the lightwell, which measures approximately 2.6, by 4.0m. On three sides the lightwell is enclosed by the main building which is several stories high. The shortest side of the lightwell is enclosed by a retaining wall that is approximately 4.5 metres high. Three windows (one to the living room and two to the bedroom) would look out onto the escape stair which is approximately 1m wide. The effect of looking out into the constrained spaces, and the height of the walls opposite the windows, would combine to result in an unacceptable lack of outlook for occupiers of the proposed flat.
7. I accept that the question of a satisfactory outlook is to some extent subjective, and that in this case the Appellant states that the attraction of the property is in its internal spaces and its location, and that privacy is of greater importance to him than outlook. Nevertheless the NPPF advises that planning policies and decisions should create places which promote health and well-being, with a high standard of amenity for existing and future users. The relevant saved policies of the BHLP are consistent with this objective and are designed to achieve such high standards. I understand that outlook is not a matter of concern to the Appellant and that subsequent purchasers would be able to make their own assessment of the importance of outlook. However, I consider it is important to assess the scheme in relation to reasonable standards of amenity, regardless of the preferences of an individual Appellant.
8. The Appellant states that all habitable rooms within the proposal benefit from large windows as illustrated on the submitted drawings of area in excess of that required to satisfy Building Regulations criteria regarding daylight. The Appellant's amended daylight report makes an average daylight factor (ADF) assessment which calculates the average illuminance within a room as a proportion of the illuminance available to an unobstructed point outdoors under a sky of known luminance and luminance distribution. This calculation considers the physical nature of the room behind the window, including transmittance and surface reflectivity. The Building Relations Establishment (BRE) Guide sets out the following guidelines for the assessment of the ADF: *'If a predominantly day lit appearance is required, then the ADF should be 5% or more if there is no supplementary electric lighting, or 2% or more if supplementary electric lighting is provided in the dwellings. The following*

minimum average daylight factors should be achieved: 1% in bedrooms, 1.5% in living rooms and 2% in kitchens.'

9. The Appellant's amended daylight report (07 Dec 2017) shows that the availability of natural light to all rooms would be limited. An assessment of 'current' average illuminance levels for each room type (pages 12 and 13 of the daylight report) gives the following ADFs: Kitchen - 2.1%; Living Room - 1.1%; Bedroom - 1.3%. These averages are calculated for the rooms as a whole.
10. However the Appellant considers that the average daylight levels which might reasonably be achieved by modification to the external surfaces comfortably exceed the minimum values referred to in the Building Regulations Establishment Guide. These are illustrated in the second coloured figure on Page 19 of the daylight report. The 'potential average illuminance' to part of the kitchen adjacent to the lightwell would have an ADF of 4.4%. A significant part of the kitchen is not assessed. Part of the living room, lit at one end from the light well and at the other from a new light inserted in an existing arch, would have 3.7% average daylight factor. A further substantial part of the living room is not assessed. A small part of the bedroom adjacent to the two window openings would have 2.1% average daylight factor, from two new windows looking onto the opened out stairwell. The remainder of the bedroom is not assessed.
11. It is suggested that these levels could be achieved with the use of a variety of external surface materials, including mirrored surface material/polished surface metal sheeting material (opposite the lightwell window to the kitchen area), and gloss white paint or white glazed brick slip, and white concrete stone pavers (elsewhere). Subsequently, in the appeal statement, the Appellant stated that existing white tiles in the lightwell would be polished, and no new or different materials would be required to achieve these light levels. The Appellant concludes that following BRE Guidelines for ADF in habitable rooms, the potential ADF for each of the habitable rooms exceeds the minimum range, surpassing the BRE minimum conditions for the Kitchen and Bedroom and Living Room.
12. It is however apparent that the assessment of these enhanced 'average' light levels includes only those parts of the rooms closer to the light wells. Areas away from the light wells, including part of the kitchen, and significant parts of the living room and bedroom are not covered in the average calculation, for reasons which are not entirely clear. I do not agree with the Appellant's view that any stated discrepancy in room area between the ADF report and the submitted drawings would be considered insignificant and not materially affect the achievable values, as the areas involved are quite substantial as a proportion of the rooms as a whole.
13. I accept that the BRE guidance is not a public policy document, though it is widely used in the assessment of impacts of development on light levels. However I do not consider that the evidence presented demonstrates conclusively that natural light levels available to occupiers would be acceptable, particularly taking into account the very restricted visible sky fraction from any of the window openings.
14. I note that artificial lighting would most probably be required even during daylight hours, and it is likely that some form of artificial ventilation would also be necessary, notwithstanding opportunities for through ventilation via the

- lightwells at either end of the living room. Nevertheless the resulting energy requirement could be mitigated by the use of low energy bulbs, and should be balanced against the reuse of an existing building in a broadly sustainable location. On balance, and set against the opportunity to provide insulation and promote low energy lighting, I do not consider that the limited energy requirement for lighting and ventilation would result in the dwelling being considered unsustainable. However this does not overcome my concerns over poor natural light levels and outlook.
15. With regard to the amenity of neighbours, I agree with the Council that, given the constrained nature of the lightwell and the hard surfaces of the walls, it is likely that any noise generated would reflect off the walls and cause disturbance to neighbouring occupiers, in particular those on the ground floor with windows facing onto the lightwell. The application plans show an internal platform and stairs in the living room, with doors opening onto the lightwell, illustrated as a private amenity space with table and chairs. However I accept that this matter is capable of being addressed by a condition on any permission to omit the raised platform and prevent use of the lightwell as amenity space. A communal outdoor garden is provided for other residents of the building. I understand that the Appellant intends to pay a proportionate service charge for communal upkeep, and in these circumstances, access to the communal garden could be made available for occupiers of the proposed apartment.
 16. The Appellant draws attention to the benefits of the scheme in the context of the advice of the revised NPPF. The proposed apartment occupies a highly sustainable location, and would contribute to the economic and social dimensions of sustainability by re-using currently unoccupied space in an attractive listed building to create a single one-bedroom apartment. This would contribute in a small way to the housing supply in Brighton and Hove, and to economic activity during the construction period. In some respects, the proposal would achieve good design, as recognised by the grant of listed building consent. However, to my mind the inherent short-comings arising from poor outlook and restricted daylight would result in poor design in respect of the living conditions of occupiers, by creating an oppressive living environment notwithstanding the use of artificial lighting. In this respect it would fail to create a living space with a high standard of amenity for existing and future users, as sought in paragraph 127 of the NPPF, and cannot therefore be considered to satisfy all three dimensions of sustainability.
 17. In conclusion I find that, whilst potential effects on neighbours' living conditions could be addressed by a condition restricting use of the lightwell as amenity space, the proposed development would be harmful to the living conditions of occupiers by reason of poor outlook and poor natural lighting. It would conflict with Policy CP8 of the CP and saved Policy QD27 of the BHL. I further conclude that the benefits of the scheme would not outweigh the harm to the living conditions of future occupiers, and that, accordingly, the appeal should be dismissed.
 18. In reaching this conclusion I have taken into account the permission granted for the conversion at 39-40 Sussex Square, where light and outlook were compromised. The Council has stated that at least some rooms in that scheme are well-lit by roof-lights and others have a reasonable outlook. It appears that the Council gave weight to the need to find a viable use to fund investment in

converting part of a Grade I listed building for which no other use was likely to be viable.

19. I acknowledge that the spaces in the present appeal building are currently unused, and there is no obligation on the freeholder to make them available for storage or any other use. However they constitute a relatively small element of a large building which has been successfully converted to residential use, and which is well maintained and not under any threat of deterioration.
20. For these reasons, I consider that the circumstances in the Sussex Square scheme are readily distinguishable from this appeal scheme, and should not be regarded as setting an irresistible precedent.

David Richards

Inspector

