



Appeal Decision

Site visit made on 14 October 2009

by **R J Perrins MA MCM**

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

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Decision date:
3 November 2009

Appeal Ref: APP/Q1445/C/09/2101291 19 Norfolk Square, Brighton BN1 2PB.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Hasan Kara against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is 2007/0394.
- The notice was issued on 11 March 2009.
- The breach of planning control as alleged in the notice is without planning permission the installation of one air-conditioning unit to the rear of the property and the construction of an associated corrugated air-conditioning enclosure.
- The requirements of the notice are:
 1. Remove the air-conditioning unit and fixings from the rear yard of the property.
 2. Remove the associated, corrugated air-conditioning enclosures and fixings from the rear yard of the property.
 3. Make good any damage caused to the rear of the property to match the rest of the existing building.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Decision

1. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of one air-conditioning unit to the rear of the property and the construction of an associated corrugated air-conditioning enclosure at 19 Norfolk Square, Brighton BN1 2PB referred to in the notice, subject to the following conditions:
 - 1) The external air conditioning unit hereby permitted shall not operate outside the hours of 0900 and 2200.

The appeal on ground (a)

Main issues

2. From my consideration of the evidence and what I saw during my site inspection, I consider the main issues to be; the effect of the development on the character and appearance of the area; whether the development preserves or enhances the character or appearance of the Regency Square Conservation Area and; the effect of the development upon the living conditions of the neighbouring residents with regard to noise.

Character and appearance of the area

3. The air conditioning unit is situated at the rear of No 19 within a small enclosed yard. There is no public access to, or view of, the area although flats above the shop at second and third floors (when viewed from the courtyard) have an oblique view of the installation. Windows opening onto the yard at ground and first floor serve the shop which runs the unit. The yard is a rather bland dank area with a large amount of plastic and metal external pipework on the west and south facing walls.
4. Saved policies QD14 and HE6 of the Brighton and Hove Local Plan 2005 (BHLP) seek developments that are of high quality design and respect the character, materials and appearance of the host and adjoining properties. Policy HE6 seeks to preserve or enhance the character of the conservation area and states that proposals that would have an adverse impact upon that will not be permitted.
5. I accept that the enclosure, a timber framed and corrugated roofed structure, does not relate well to the existing building, is of poor design and build quality. The materials have, to my mind, been chosen for their purpose rather than their appearance and the associated pipework and fixings have little aesthetic merit. The installation has no redeeming features.
6. However, it cannot be seen from any public vantage point, views from the flats above would have to be actively sought and would be at an oblique angle onto the roof of the structure. The yard itself with its haphazard pipe work, in different materials, has little character from which to detract. In my opinion, the development has no material impact upon the character and appearance of the area. For these reasons I find it would not conflict with the aims of Policy QD14 of the BHLP.

Whether the development carried out preserves or enhances the character or appearance of the Regency Square Conservation Area

7. The Conservation Area is characterised by set-piece squares and terraces with a marked contrast between the formal architecture of the grander buildings such as those in Regency Square to the smaller scale three-storey houses found in Norfolk Square. The air-conditioning unit cannot be seen from the public domain. As I have concluded that the development carried out would not have an adverse impact upon the character or appearance of the yard, I consider that the character and appearance of the Conservation Area would be preserved and the development would not be contrary to Policy HE6 of the BHLP.

Living Conditions

8. There are conflicting views on whether or not the noise issue has been resolved and I accept that the unit generates noise. However, it is clear that the appellant has taken steps to reduce the impact of that noise following the issue of a noise abatement notice by the Council. Without any detailed acoustic information before me, and given that noise is no longer an issue raised by the Council, I have no reason to consider that the development has led to unacceptable harm to the living conditions of occupiers of nearby dwellings. However, given the close proximity of residential properties, I consider a

precautionary approach is warranted, particularly with regard to night time noise. I will therefore restrict the operating hours by condition to safeguard those living conditions. Moreover, my decision does not preclude, should it be necessary, action being taken under separate environmental legislation.

Conclusion

9. For the reasons given above and having considered all other matters raised I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Richard Perrins

Inspector

