



Appeal Decisions

Hearing held on 1 December 2011

Site visit made on 1 December 2011

by Lesley Coffey BA (Hons) BTP MRTPI

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

Decision date: 18 January 2012

Appeal A Ref: APP/Q1445/A/11/2156187

56-58 St James Street, Brighton, BN2 1QG

- 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 Michael Deol against the decision of Brighton & Hove City Council.
 - The application Ref BH2011/00349, dated 7 February 2011, was refused by notice dated 13 June 2011.
 - The development proposed is the remodelling and extension of existing building to form a four storey building with a cafe/restaurant (A3) at ground floor level and 6 number self-contained flats above (part retrospective).
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Appeal B Ref: APP/Q1445/A/11/2156197

56-58 St James Street, Brighton, BN2 1QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Michael Deol against Brighton & Hove City Council.
 - The application Ref BH2011/00346 is dated 7 February 2011.
 - The development proposed is the change of use of restaurant (A3) into 1 Bedroom self-contained flat on ground floor (C3).
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Decisions

Appeal A Ref: APP/Q1445/A/11/2156187

1. The appeal is dismissed.

Appeal B Ref: APP/Q1445/A/11/2156197

2. The appeal is dismissed and planning permission for the change of use from part retail use (A1) and part restaurant use (A3) into 1 bedroom self-contained flat on ground floor (C3) is refused.

Application for costs

3. At the Hearing both parties made an application for costs. These applications will be the subject of separate Decisions.

Procedural Matters

4. Planning permission for the remodelling and extension of the existing building to form a three storey building with a cafe/restaurant (A3) at ground floor level and 5 self-contained flats above was granted in April 2010. A non-material

amendment was subsequently approved in January 2011. Details pursuant to a number of conditions were approved in February 2011. The submitted plans refer to the previously approved scheme as 'existing' and the appeal proposals as 'proposed'.

Appeal A

5. The description above differs from that on the application form and was agreed by the parties at the time at which the application was submitted.

Appeal B

6. 56-58 St James Street previously comprised an A3 and an A1 unit on the ground floor. Although the extant planning permission permitted the use of both premises for A3 purposes, at the time at which the application was submitted, the change of use and permitted alterations had not been implemented. For this reason the Council considered the application to be nonsensical and incapable of determination.
7. The proposed flat would occupy the rear part of both of the original commercial units. Since the property at 58 has not been previously occupied for A3 purposes, I consider that the proposal constitutes a change of use from part A1 use and part A3 use to a self-contained flat. I have considered the Appeal B on this basis.

Main Issues

Appeal A

8. At the time of my visit the permitted scheme was substantially completed. In view of the previous planning permission and the advanced stage of the works on site, I consider the main issue to be the effect of the proposed third floor on the living conditions of the surrounding occupants with particular reference to visual prominence and loss of sunlight and daylight.

Appeal B

9. I consider the main issues to be the effect of the proposal on the vitality and viability of St James Street District Centre and whether the proposed flat would provide satisfactory living conditions for future occupants.

Reasons

Appeal A

10. The essential difference between the appeal proposal and the previously permitted scheme is the additional floor of accommodation. This comprises a flat-roofed extension with an inset balcony across the front part of the building, with the staircase tower projecting beyond.
11. The appeal site is situated within the East Cliff Conservation Area which is characterised by predominantly regency style terraced dwellings between two and five storeys high. The Council does not object to the design or appearance of the proposal or consider that it would harm the surrounding conservation area. The variations in the height of the St James Avenue elevation would add

- visual interest to the appearance of the building. Overall, the proposal would preserve the character of the conservation area.
12. The appeal site is adjoined by the four storey building at 59-60 St James Street, and the rear boundary of the properties at 2-4 Upper Rock Gardens. The area has a dense urban character with properties extending close to each other with the properties separated by individual lightwells and small rear yards.
 13. The part of the second floor extension that projects beyond the rear elevation of 59 -60 St James is inset from the boundary by about 2.5 metres. The additional storey would follow a similar line but would not extend as far. It would be situated very close to the windows in the rear elevation of the flats at 59-60 St James Street. Due to its height, and the enclosure arising from the existing properties in Upper Rock Gardens it would have an overbearing effect on the outlook from these flats.
 14. Due to the height and proximity of the surrounding buildings, the proposal would have a minimal effect on the outlook from the ground floor of the properties in Upper Rock Gardens. However, the proposal would obscure the limited views over the roof tops that the occupants of the upper floors of these properties currently enjoy. I appreciate that Number 3 is used as a guest house and visitors are likely to stay for a short period. Furthermore, due to the tight urban grain of the area, views are often restricted by the proximity of neighbouring properties. Nevertheless the appeal proposal would further reduce the very limited outlook that the occupants of these properties currently enjoy, and would give rise to an unacceptable sense of enclosure.
 15. Due to the proximity of existing buildings and the location of the proposal relative to the surrounding properties, it would not give rise to a significant loss of sunlight or daylight to surrounding properties. Whilst the outlook of the occupants of the dwellings in St James Avenue would alter, due to the distance of the additional floor of accommodation from these dwellings, it would not have an overbearing effect on outlook or give rise to a significant reduction in sunlight or daylight.
 16. I am aware that in 2003 the Council permitted a proposal that included a third floor of accommodation. However, it broadly aligned with the rear elevation of the adjacent flats in St James Street and therefore is not comparable with the appeal proposal.
 17. I therefore conclude that the proposal would have an unacceptable effect on the living conditions of surrounding residents and would fail to comply with policy QD27 of the Brighton and Hove Local Plan.

Appeal B

18. The appeal site comes within the St James Street District Centre, where Local Plan policy SR5 seeks to maintain the vitality and viability of the centre. It also states that changes to residential use will not be permitted.
19. 56 and 58 St James Road occupy a corner location with a long return frontage to St James Avenue. The proposed flat would occupy the rear part of the property. At the time of my visit the internal works to facilitate the use of the premises for A3 purpose were at an advanced stage, with the cooking facilities and serving area in place. The appellant stated that the use would commence

in the next few weeks. Whilst the resultant A3 unit would be smaller than that previously permitted, it would remain a large A3 unit and would occupy a prominent corner position within St James Street. The properties within St James Street are varied in size and the proposed A3 unit would add to this range. It would remain large enough to allow for flexibility in the manner in which it could be used.

20. St James Street has a bustling and vibrant character, with good levels of pedestrian activity and few vacant properties. Although the Local Plan proposals map includes the return frontages of properties within the District Centre, pedestrian and commercial activity is firmly concentrated within St James Street. The proposal would not interrupt the established shopping frontage and would have a negligible effect on the vitality of the shopping frontage. I therefore conclude that the proposal would not harm the vitality or viability of the St James Street District Centre and would not conflict with the intentions of policy SR5.

Living Conditions

21. The proposal is for a one bedroom flat with access from St James Avenue. Two of the living room windows would face directly onto St James Avenue, and would afford the occupants little privacy. At the Hearing the appellant suggested that these could be obscure glazed. Nonetheless, the outlook from the other windows would be onto a small service yard that includes refuse and cycle storage and an electricity sub-station. Whilst the sub-station could be screened to improve its appearance, due to the poor outlook and lack of privacy, the occupants of the proposed flat would have an unacceptably poor level of residential amenity.
22. I therefore conclude that the proposal would fail to provide satisfactory living conditions for future residents, and would fail to comply with Local Plan policy HO5 which requires the provision of satisfactory amenity space for all new dwellings and *Planning Policy Statement 3:Housing* which seeks to ensure that new housing is of a high quality and well designed.
23. Although the proposal would not harm the vitality and viability of the District Centre, the unacceptable living conditions for future occupants is an overriding and compelling objection to the proposal.

Conclusions

Appeal A Ref: APP/Q1445/A/11/2156187

24. For the reasons given above I conclude that the appeal should be dismissed.

Appeal B Ref: APP/Q1445/A/11/2156197

25. For the reasons given above I conclude that the appeal should be dismissed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gary Brookes	Agent
Michael Deol	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jonathon Puplett	Planning Officer
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INTERESTED PERSONS:

Frank Hazel
Keith McKenna

DOCUMENTS

- 1 Council's letter dated 24 November 2011 notifying interested parties of arrangements for the Hearing
- 2 Extract from Proposals Map submitted by the Council

PHOTOGRAPHS

- 1 Photographs of the appeal site submitted by the Council

