



Appeal Decision

Site visit made on 3 December 2013

by Elizabeth Lawrence BTP MRTPI

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

Decision date: 16 December 2013

Appeal Ref: APP/Q1445/A/13/2201732

48 West Street, Brighton, East Sussex, BN1 2RA.

- 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 Essyt Sharanizadeh against the decision of Brighton & Hove City Council.
 - The application Ref BH2013/00418 dated 10 February 2013, was refused by notice dated 20 June 2013.
 - The development proposed is Regularisation of smoking shelter at 1st Floor rear.
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Preliminary matter

1. As stated in the Appellant's grounds of appeal and as confirmed at the Appeal site visit the proposal relates to the new roof over part of the existing rear roof terrace and does not relate to the use of the roof terrace, or the adjacent older roof area. For this reason and in the interests of precision I propose to change the description of the proposed development to "Retention of the central and northern sections of the roof over the open roof area."

Decision

2. The appeal is allowed and planning permission is granted for Retention of the central and northern sections of the roof over the existing open roof area at 48 West Street, Brighton, East Sussex, BN1 2RA, in accordance with the terms of the application, Ref BH2013/00418 dated 10 February 2013.

Main Issue

3. The first main issue is the effect of the proposal on the character and appearance of the host property and the Heritage Asset, Old Town Conservation Area (CA). The second main issue is the effect of the scheme on the living conditions of nearby residents with particular regard to noise and associated disturbance.

Reasons

Character and appearance

4. The Old Town Conservation Area is located in the commercial centre of Brighton and includes the adjacent stretch of coastline. A significant proportion of the older buildings in the CA date from the late 18th and early 19th centuries
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and are arranged in diverse terraces of between two and five stories in height. The buildings have a mixture of pitched and flat roofs and are interspersed by modern terraced buildings similarly with a variety of roof forms.

5. The Appeal site is located within West Street which is dominated by retail and leisure uses and through traffic. The Appeal building is on the east side of the street and comprises a three storey Stucco faced terraced building. The first two floors are used for a restaurant and the flat roof at the rear of the building is used in conjunction with this restaurant use.
6. As stated in the National Planning Policy Framework (NPPF) great weight should be given to the conservation of heritage assets when considering any proposals which could affect them.
7. The proposed flat felt roof, which has already been constructed, is elevated above an older roof which was constructed some years ago, over part of the rear rooftop terrace. The proposed roof sits on timber supports and its sides are partially clad and partially open.
8. The proposed roof structure is lightweight and utilitarian in appearance and is totally screened from the street scene or any public views from the conservation area. The roof is surrounded by a mixture of flat and pitched roofs of the surrounding buildings and is visually contained by the upper floors and roofs of the buildings to the north, east and west. As such it has a negligible impact on the roofscape as a whole and can only be seen from a restricted number of upper floor windows.
9. For these reasons the proposal would have a very minor impact on the significance of the CA and the character and appearance of the host property. It is however clear from the site visit that the roof terrace is well used and contributes to the vitality and viability of the business and the commercial area as a whole. These public benefits outweigh the negligible harm caused by the proposed roof.
10. I conclude on this main issue that the proposal preserves the overall character and appearance of the CA and the host building. Although the structure is not of a high standard of design, it is nonetheless functional and discrete and complies with the objectives of policies QD1 and HE6 of the Brighton & Hove Local Plan. Together they seek to preserve the character or appearance of conservation areas and ensure that developments do not have a harmful impact on the townscape, including roofscapes. The roof similarly complies with the NPPF.

Living conditions

11. The Appeal site is located in a busy central area where there is a considerable amount of evening and night time entertainment. The site is close to a number of bars, restaurants, an entertainment centre and car parks and the Appeal premises are themselves licensed to operate until 5am.
12. The roof terrace would continue to be used irrespective of whether or not the proposed roof remained. The roof likely helps contain the noise generated by the use of the terrace, however this has to be weighed against the fact that without the roof the terrace would be less likely to be used during adverse

weather conditions. At the same time the absence of a full roof could result in less people wishing to use it.

13. There appear to be few residential units in the locality and the Council's Environmental Health Officer has confirmed that they had received just two complaints concerning noise generated by the use of the premises, the last of which was in 2009. These complaints related to the playing of music and not people using the smoking shelter and no nuisance was ever established.
14. Having regard to all of these factors the retention of part of the roof over the terrace would be unlikely to materially harm the living conditions of any local residents due to noise and associated disturbance. Also, if any part of the premises were to generate an excessive level of noise or disturbance the Council could deal with the matter under other legislation.
15. The Council has suggested the imposition of a condition which would restrict the use of the terrace to between the hours of 10.00 and 00.00 daily. However, the terrace has been used without such conditions since 2006 and is directly associated with the use of the whole premises, which are subject to licensing legislation. In addition, as stated above, the Council is able to deal with any noise nuisance under other legislation. For these reasons I consider that such a condition would be unnecessary. The Council has not suggested the imposition of any other conditions and I similarly do not consider that any are necessary.
16. I conclude on this main issue that the proposal would not have a materially adverse impact on the living conditions of any local residents due to noise and associated disturbance. It therefore complies with policies SU10 and QD27 of the Local Plan, which seek to protect the living conditions of residents.

Conclusion

17. Having regard to the conclusions on the main issue and having regard to all other matters raised the Appeal is allowed.

Elizabeth Lawrence

INSPECTOR