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## Appeal Decisions

Site visit made on 7 April 2014

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

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

**Decision date: 17 April 2014**

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### **Appeal A: APP/Q1445/A/13/2204291**

#### **15 & 15a Victoria Terrace, Hove, East Sussex BN3 2WB**

- 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 S Gregory and Mr S Taylor against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/01438, dated 3 May 2013, was refused by the Council by notice dated 11 July 2013.
  - The development proposed is alterations and extensions to 15 and 15a Victoria Terrace to re-locate existing café and change of use of portion of existing shop at 15 Victoria Terrace. Demolition of existing café and construction of new house on site.
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### **Appeal B: APP/Q1445/E/13/2204392**

#### **15 & 15a Victoria Terrace, Hove, East Sussex BN3 2WB**

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
  - The appeal is made by Mr S Gregory and Mr S Taylor against the decision of Brighton & Hove City Council.
  - The application Ref BH2013/01517, dated 3 May 2013, was refused by the Council by notice dated 11 July 2013.
  - The demolition proposed is of 15a Victoria Terrace.
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### **Decisions**

1. I dismiss both appeals.

### **Application for Costs**

2. An application for costs was made by Mr S Gregory and Mr S Taylor against Brighton & Hove City Council. This application is the subject of a separate Decision.

### **Main Issues**

3. These are:
  - In both appeals the effect of the proposals on the character and appearance of the Cliftonville Conservation Area.
  - In Appeal A only the effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to outlook, noise and disturbance, and on the living conditions of prospective occupiers with particular regard to amenity space.

## Reasons

4. The Government launched web based Planning Practice Guidance on 6 March 2014, after the receipt of representations to this appeal. The content of the Guidance has been considered, but in light of the facts of this case that content does not alter the conclusions reached.

### *Character and Appearance*

5. The Council are concerned that granting conservation area consent prior to their being an acceptable scheme for re-building would leave an unattractive gap. In fact there is already a gap at first floor and above. Such a gap, even at full height, would not be unusual where the end of a terrace on a major road turns into a minor road, such as here, but that gap would be occupied by the rear garden or yard. In this case removal of the existing buildings might expose unattractive lower level works and the backs of other buildings, which at best could be hidden by hoardings. In this case there is unlikely to be a gap presented in the way a garden or service yard might be. It is concluded that it is reasonable to withhold conservation area consent unless the scheme proposed is found acceptable.
6. In fact, the site as it is presented now is not an attractive feature of the area. It is neither an attractive open space as a gap, nor an attractive infill to continue the frontage, but appears more of a discontinuity of frontage development, occupied by the low shopfront and fascia of the café and the incongruous lean-to roof to the south. The gap at higher level does not contribute to the character and appearance of the conservation area either and a well-designed replacement would be an enhancement of that character and appearance.
7. The proposed infill would follow the design of the terrace to the south and to available views the masonry parts with the window and door openings would appear acceptable, and the treatment of the now mostly blank wall behind number 15 would be acceptable with the inclusion of the café shopfront and fascia, this time having an upper floor with the kitchen window to the flat. There are some resulting steps and flashings where high walls meet lower roofs but this is not unusual at such locations and would not appear out of place here.
8. The Council's main concern is the inset balcony to the top-floor bedroom 2. This is drawn as a hole in the roof plane with rooflights over, a somewhat unusual solution to the need for light and air. There is real doubt over whether these features would be seen in any event, due to the narrow width of the street and the angles from the south where the street widens before a view is cut off by nearer buildings. To the north and across the far side of the main road, in addition to distance reducing any effect, there is further doubt as to the degree to which the high triangular wall at the return of the parapet to number 15 before it meets the sloping fire wall would prevent or lessen a view.
9. On balance, the evidence suggests that the hole in the roof plane and position of the rooflights would be unlikely to so disrupt views of the building as to cause harm to the character and appearance of the conservation area, and that by reason of them being in place the aims of Local Plan Policies QD1, which seeks a high standard of design, QD2 which requires development to emphasise and enhance the positive qualities of the local neighbourhood and HE6 which concerns development in conservation areas would be met. Section

72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area, and this would be satisfied also.

10. However, the nature of the balcony shown on Drawing 923/P/4C is unclear, the plan does not show any opening of the vertical glazing and the section does not show any opening of the rooflight, but both could be the case. The junction of the rooflight and vertical glazing appears to be in the order of 1.7m off the floor internally. This would not preclude access to the balcony, and that description implies such use. Suggested condition xvii however seeks to prevent use of flat roof areas.
11. As is often the case with balconies, it is their use and the possibility of paraphernalia being placed that causes harm in a way that their mere presence does not. Were all else acceptable in this proposal there would be a need to seek further details as to the use and access arrangements, to avoid the possibility of items or people appearing as incongruous intrusions above roof level. Conditions would need to be imposed to ensure that any possible harm was avoided, or otherwise satisfactorily mitigated.

#### *Living Conditions*

12. The present arrangement is that the flat over the rear of number 15 has a kitchen formed in the rear closet wing with a window facing over Sussex Road, and a bedroom in the main house facing to the south and looking out over the space alongside the blank side wall of the kitchen and beyond over the rear of the low café to the lean-to roof and the gable end of 1 Sussex Road. The building up of the proposed dwelling would occupy the space now vacant above the café bringing a new wall closer. The appellant has demonstrated that a 45° vertical line off the nearest and highest point would not affect the window to the bedroom, and there would be an unaffected relationship of built form and open space to both the immediate left and right.
13. However, whilst the relationship would satisfy the usual 'rule of thumb' as to this vertical line, and whilst there is horizontal openness to the right, the proximity of the wall to the left, which is already in place, would be joined by walls in close proximity straight-ahead, albeit one behind and above the other due to the intervening roof slope. The effect would be a feeling of being constrained and hemmed in, which, on the balance of the openness and the enclosure, would be unacceptable and would cause harm to the living conditions of the neighbours, making due allowance for this being a bedroom. This aspect of the proposal would fail to provide the level of amenity sought by Policy QD27.
14. Turning to the concern over noise, this stems from the proximity of the café kitchen extract to the same window, within the space just described. Policy SU10 states that in order to minimise the impact of noise, applicants may be required to submit a noise impact study. That has not been provided and it is unclear whether it was requested as is implied to be the process in the policy wording.
15. The appellants say that this matter can be covered by a condition as technical solutions are clearly always forthcoming, and suggest a level of 5dB(A) below the existing background noise. One of the Council's suggested conditions uses

this level together with a need to submit details of soundproofing to plant as well as odour control measures. Unless there were to be a condition covering the hours of operation of the café, the existing noise level would need to take account of quiet periods. In the circumstances of the semi-enclosed nature of the space where the outlet would be, and the proximity to a bedroom window, this is a situation where the reassurance provided by a noise impact study would have permitted a condition to be used with confidence. However, in its absence there are real doubts over whether the outlet arrangements drawn can deliver the noise levels of the suggested condition, or whether attaining these levels may lead to some other type of outlet that could be unacceptable for visual or other reasons.

16. With regard to prospective occupiers, Policy HO5 seeks private useable amenity space where appropriate to the scale and character of the development and Policy QD27 cited above concerns residential amenity. It is apparent that the dwelling could be occupied by four adults, and there is sufficient living, eating, kitchen and bathroom facilities for that level of use. Similarly the facilities and internal space provided would be suitable for family use of at least one child. The outdoor space allocated however is an L shaped patio shared with bicycle and bin storage and built over by the living room on the ground floor. Due to its shape and the need to gain access to the storage denoted on the drawing, the useable space is limited, and the poor natural lighting and likely limited air movement could make this unattractive. With regard to the size of the living accommodation, and the possibility of family use, the provision does not reach the standard envisaged in the wording of Policy HO5.
17. It is the case, as stated by the appellant, that the dwelling has ready access to the beach at the end of Sussex Road, and lawns to the east. However, these are not private spaces and do not provide a secure place for a young child to play while a carer is doing things in the house. The conclusion is that the size and quality of the amenity space is not sufficient to provide acceptable living conditions for the size and type of dwelling proposed.

## **Conclusions**

18. The proposed formation of a new dwelling on previously developed land in an accessible urban location would be sustainable development and a benefit. There would also be the benefit of the improvement to the street scene through the filling of the present gap at first floor level. However, the corner location of this site, with a flying freehold and a somewhat constricted area inside the L shape formed by the frontage onto the two roads has led to a number of shortcomings which individually might attract only medium weight against the grant of permission, but together indicate an attempt to fit too much built form onto the site leading to the conclusion that permission should not be granted. There are doubts remaining over the nature of the use of the inset balcony and the risk of visual harm, and over the performance of the extract outlet. As a result it is not appropriate to grant planning permission for the new development or conservation area consent for the demolition works. For the reasons given above it is concluded that both of the appeals should be dismissed.

*S J Papworth*

INSPECTOR