



Appeal Decision

Site visit made on 16 July 2013

by **S M Holden** BSc MSc CEng TPP MICE MRTPI FCIHT

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

Decision date: 5 August 2013

Appeal Ref: **APP/Q1445/A/13/2193617**

Gardener's Arms, 103 Abinger Road, Portslade, Brighton BN41 1SD

- 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 Alan Bull of Gardener Developments Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/02418, dated 3 August 2012 was refused by notice dated 24 January 2013.
 - The development proposed is removal of existing rear extensions and roof terrace and creation of new rear extension to facilitate conversion of pub into local convenience store. Refurbishment of first floor flat including new south and west facing terrace.
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Decision

1. The appeal is allowed and planning permission granted for demolition of existing rear extensions and erection of a rear and side extension, other alterations to facilitate conversion to a convenience store and alterations to the existing first floor flat, including a new roof terrace at Gardener's Arms, 103 Abinger Road, Portslade, Brighton BN41 1SD, in accordance with the application Ref: Ref BH2012/02418, dated 3 August 2012, subject to the conditions set out in Annex A of this decision.

Procedural matters

2. On its decision notice the Council described the development as: "demolition of existing rear extensions and erection of a rear and side extension and other alterations to facilitate conversion to a convenience store. Alterations to the existing first floor flat, including a new roof terrace". This differs somewhat from that used on the application and appeal forms. However, for clarity I have used this description of the development in my determination of the appeal proposal.
3. During the period in which the Council was considering the application amendments were made to the access arrangements, which affected the design of the proposed extension. The Council made its decision on the basis of the amended plans and it is these that I have considered in my determination of the appeal.

Main issue

4. The main issue is the effect of the proposed extension on the character and appearance of the host property and the surrounding area.

Reasons

5. The appeal site is currently occupied by a disused public house, The Gardener's Arms, which is close to the junction of Abinger Road and Shelldale Road. The site includes an open area to the south side of the building that was previously used as a car park. The proposal is to extend the building to provide a new convenience store whilst using the ground floor of the existing building for associated office, storage and staff facilities. The first floor flat, which is self-contained, would be refurbished. The remainder of the site would provide a delivery bay and seven parking spaces for visitors to the store.
6. The site is in a prominent position at the junction of the two streets and is highly visible, particularly when approached from the east. Immediately to the north and west of the site there are two storey, terraced houses typical of the early 20th century. They occupy small plots and have no on-site parking provision. To the south of the site Shelldale Road has a mixture of mid 20th century terraced and semi-detached houses with a more open character. On the opposite corner is a flat-roofed block of flats.
7. The existing buildings on the site are typical of their type and era, but are not ones of any architectural merit. The existing extension, which would be removed, is utilitarian in appearance and does not contribute to the surrounding townscape. The proposed extension would be a substantial structure that would fill almost the entire depth of the site between the original rear elevation of the pub and the western boundary. The rear part of the extension would also be wider than the existing pub. It would be a modern design and would incorporate a large flat roof. Extensive glazing panels would feature on the elevation facing Shelldale Road.
8. The design of the proposed extension would therefore contrast with the surrounding buildings that are predominantly two-storey with pitched roofs. It would introduce a building that is entirely different in form and function to those in close proximity to it. However, the extension would be low profile and the two pitched roofs of the pub, with their different ridge levels, would be retained. This would ensure that the proposal would be unobtrusive when viewed from Abinger Road as it would be largely tucked to the rear of the existing building. Its south-eastern elevation would be set well behind the building line that characterises the north side of Shelldale Road. This would reduce its visibility when travelling east along this section of the street.
9. The length of the extension would be apparent when travelling in a westerly direction along Shelldale Road. However, this would, in my view, serve to emphasise its function as a convenience store. As it would connect with the flank wall of the pub the need to provide integration with other features on the existing building would not arise. The depth of the extension towards the boundary with 101 Abinger Road would not be apparent from the public realm, although it would probably be seen from the upper floors of some of the surrounding houses. Furthermore, the combined effects of the low profile of the extension, its set-back from the boundaries of the site and the provision of the small car park would ensure that some of the corner's existing open appearance would be retained.
10. Following refusal of the appeal proposal an amended scheme was submitted to and approved by the Council on 20 May 2013, Ref: BH2013/00919, subject to conditions. I note that the overall footprint of the approved extension appears

to be the same as that of the appeal proposal. However, the revised scheme would include the addition of a second storey to the building with a pitched and hipped roof. The fenestration arrangements of the south-east elevation have also been re-designed to include windows in the existing flank wall of the pub. I have taken account of this amended scheme, which could be implemented, as part of my assessment.

11. Taking all the above factors into consideration, in my view, the overall proposal would be a simple, modern structure that would replace the ad-hoc and incoherent collection of existing extensions on this prominent site. In this context, although the proposal would be quite different from the surrounding domestic dwellings, I consider that these contrasting styles would be acceptable and would contribute to an improvement in the area's appearance.
12. I therefore conclude that the proposed extension would not be harmful to the character and appearance of the host property or the surrounding area. It would therefore comply with saved Policies QD1, QD2 and QD14 of the Brighton & Hove Local Plan, which seek to secure high quality development that makes a positive contribution to the local environment.

Other matters and conditions

13. Local residents have raised concerns about the effects of the proposed convenience store on a wide range of issues, many of which have been addressed by the officers' report on the application. The loss of the public house and the provision of the convenience store are considered acceptable to the Council given the proximity of other nearby pubs and the lack of nearby provision of convenience retail outlets. I concur with its conclusions on these matters.
14. Concerns about traffic, parking and deliveries were the subject of extensive negotiation between the appellant's advisors and the Council's highway officers. Consequently amendments to the scheme were agreed to enable satisfactory access by delivery vehicles. The appellant also submitted a consultant's report, the conclusions of which were largely accepted by the Council. The Highway Authority therefore concluded that the proposal was acceptable, subject to various conditions relating to deliveries and parking for vehicles and bicycles. I see no reason to come to a different view and will impose conditions to secure parking on the site and agreement to the servicing and delivery arrangements in order to protect highway safety.
15. I appreciate that local residents are also concerned about the effects on their living conditions arising from noise and disturbance from traffic and particularly from deliveries. The level of background noise in the vicinity has been observed to be very low and the disturbances that might have previously been experienced from the presence of the pub cannot be compared with those of a convenience store. The latter is likely to result in an increased number of deliveries and more comings and goings in the early morning.
16. The Council considered the implications for local residents carefully and made recommendations about the conditions that it considers should be imposed on the hours of operation of the store, and the associated deliveries, in the event that the appeal is allowed. I understand that the appellant considers these to be over-restrictive, particularly as the store is likely to require deliveries of perishable items early in the morning. The appellant's noise consultant

provided specific evidence to address the issue of noise from delivery vehicles, based on deliveries commencing at 07.00 hours. This suggested that the average noise levels that would be likely to be experienced by the nearest residential dwellings in Abinger Road would be below those considered to be harmful by the World Health Organisation's guidelines. The Council did not fully accept these results due to the variable nature of the noises.

17. I agree with the Council that it would be unacceptable for deliveries to take place in the early hours of the morning. However, even in a quiet urban area, some noise can be expected from 07.00 hours. I therefore consider that it is reasonable for the store to open and for deliveries to be allowed from 07.00 hours during the week. However, I concur with the Council's view that deliveries on Sundays and Bank Holidays should be restricted to taking place between 10.00 and 16.00 hours. I have imposed amended conditions accordingly to protect the living conditions of nearby residents but without overly constraining the operation of the business. I have also borne in mind that the condition requiring agreement to a Delivery and Service Management plan could also incorporate measures to reduce noise disturbance in the interests of nearby residents.
18. The development will require ventilation units, condenser units and air-conditioning units, which would sit on the roof of the extension. Technical details of these were provided with the application and the Council is satisfied that these would not give rise to unacceptable levels of noise during the daytime. The Council has suggested a condition to ensure that the plant and machinery complies with specified noise attenuation requirements and another to ensure that the air-conditioning unit is not used outside the store's opening hours. I have imposed these conditions accordingly in order to safeguard the living conditions of residents in the vicinity of the site.
19. Adjoining occupiers expressed concern about the use of the access way to the west of the site and a gate onto it is shown on drawing No TA620/22 Rev H. Restricting the use of the door at this end of the building as an emergency access only can be secured by condition. However, the addition of a gate onto the access way would require the consent of the owners of the access. It is therefore not a matter that can be addressed in the context of a S78 appeal.
20. All the conditions referred to above are necessary to protect highway safety and the living conditions of residents. The Council also suggested a series of further conditions it considers necessary to the delivery of a high quality development. I have considered these in the light of the advice of Circular 11/95: *The Use of Conditions in Planning Permissions*. However, there was insufficient evidence to justify further controls on other matters, such as lighting, raised by local residents.
21. In addition to the standard time limit it is necessary that the development is carried out in accordance with the submitted details. A condition specifying the plans is therefore required for the avoidance of doubt and in the interests of proper planning. Conditions requiring agreement to the materials and full details of hard and soft landscaping are justified in the interests of the appearance of the development. I also agree that these are required to reduce the risk of flooding from surface water run off. I have set out these requirements but amended the wording to provide greater simplicity and precision. A condition to prevent open storage on the site is needed to protect the living conditions of adjoining occupiers.

22. Noise proofing of the refurbished flat is required to protect the living conditions of future occupants. Its construction to Lifetime Home standards is justified in the interests of the provision of the changing needs of households in the city. I have imposed conditions accordingly.
23. The Council suggested conditions to prevent the use of the unit as a drinking establishment or its sub-division into smaller units. I agree that these restrictions are appropriate to protect the living conditions of nearby residents and to ensure the continued viability of other local shopping areas in the City. However, I have simplified them to a condition requiring the ground floor to be operated as a single unit in A1 use.

Conclusions

24. The proposed development would make effective use of a site that was previously occupied by a public house and provide a facility in an area currently poorly served by convenience stores. The site can make adequate provision for parking and deliveries and could be accessed by a range of modes of transport. The proposal would not give rise to unacceptable traffic congestion or be harmful to highway safety. Concerns about noise and disturbance can be controlled by conditions, as can the use of the premises and various other matters of detail. The development would also create jobs, thereby supporting the Government's objective for economic growth set out in the National Planning Policy Framework, (the Framework).
25. In all these respects the Council was satisfied that the development would be acceptable. Its only concern related to the design of the scheme and particularly its size in relation to the existing building. However, for the reasons set out above I have concluded that it would not be harmful to the character and appearance of the host property or the surrounding area. I have also considered the conditions that are necessary to make the development acceptable, taking account of the various concerns expressed by main and third parties and imposed these where I have found they would meet the tests of Circular 11/95.
26. For these reasons I consider that the proposal would represent a sustainable form of development, for which there is a presumption in favour in the Framework. I therefore conclude that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

Annex A

1. The development hereby permitted shall begin within three years of the date of this decision.
2. The development hereby permitted shall not be carried out other than in complete accordance with the approved drawings listed below:

Plan Type	Drawing No	Revision
Site and block plan	TA620/01	
Existing plans and elevations	TA620/03 TA620/04 TA620/05 TA620/06 TA620/07 TA620/08 TA620/09 TA620/10 TA620/11	
Proposed site plan, block plan, plans and elevations	TA620/02 TA620/21 TA620/22 TA620/23 TA620/24 TA620/25 TA620/26 TA620/27	B G G H C C F C

3. No development shall take place until samples of the materials (including the colour of render, paintwork and colourwash) to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out strictly in accordance with the approved details.
4. No development shall take place until a scheme for the soundproofing of the proposed residential unit has been submitted to and approved in writing by the local planning authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall be retained as such thereafter.
5. No development shall take place until there has been submitted to and approved in writing a scheme for hard and soft landscaping which shall included full details of the means of enclosure, materials to be used, measures to control surface water run-off and planting within the development.
6. The scheme for hard landscaping shall be implemented in accordance with the approved details prior to first use of the development hereby permitted and retained thereafter as approved.
7. All planting, seeding or turfing within the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner.

Any trees or plants which, within a period of five years from the time of planting die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size or species, unless the local planning authority gives written consent to a variation.

8. The A1 use hereby permitted shall not commence until a Delivery & Service Management Plan, which includes details of the types and sizes of vehicles, how deliveries will take place and their frequency has been submitted to and approved in writing by the local planning authority. Thereafter all deliveries shall take place in accordance with the agreed details.
9. No servicing or deliveries shall be permitted to the site or premises except between the hours of 07.00 and 19.00 Monday to Saturday and 10.00 and 16.00 on Sundays and Bank and Public Holidays.
10. The use hereby permitted shall not be open to customers except between the hours of 07.00 and 22.00 on any day. No other activity in connection with the retail premises shall take place between the hours of 22.30 and 06.30 daily.
11. No open storage shall take place within the curtilage of the site without the prior written approval of the local planning authority.
12. Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS4142:1997.
13. The air-conditioning units shall be switched off between the hours of 22.00 and 07.00 daily.
14. The door to the rear/western elevation shall not be used for any other purpose than for emergency use.
15. Unless otherwise agreed in writing by the local planning authority, the new dwelling hereby permitted shall be constructed to Lifetime Home standards prior to its first occupation and shall be retained as such thereafter.
16. The development hereby permitted shall not be occupied until the cycle parking facilities shown on the approved plans have been fully implemented and made available for use. The cycle parking facilities shall thereafter be retained at all times for use by the occupants of, and visitors to, the development.
17. The development hereby permitted shall not be occupied until the parking facilities and layout detailed on drawing no TA620/22 rev H have been fully implemented and made available for use. The parking facilities shall thereafter be retained at all times for use by the occupants of, and visitors to, the development.
18. The development hereby permitted shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained at all times for the approved use.
19. The ground floor of the development hereby permitted shall be operated solely as a single unit in A1 use and for no other purpose.

