

Appeal Decision

Site visit made on 22 February 2016

by Joanna Reid BA(Hons) BArch(Hons) RIBA

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

Decision date: 17th March 2016

Appeal Ref: APP/Q1445/W/15/3137027

2 Stoneham Road, Hove, Brighton & Hove BN3 5HJ

- 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 Ms Anongnat Romchai of Hungry Monkey against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/01148, dated 31 March 2015, was refused by notice dated 14 August 2015.
 - The development is "I wish to apply for change of use for D1 usage permission as suggested by Brighton and Hove Council".
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. Notwithstanding the description given on the planning application form, the development is better described by the Council on its decision notice, which is "Change of use from retail (A1) to cookery club (D1). (Part retrospective)".
3. There are no powers in the *Town and Country Planning Act 1990* as amended for granting permission for a continued use or for retention, as they do not constitute an act of development as defined under section 55 of the Act. I shall deal with the relevant part of the appeal as though it were for an application made under Section 73A of the *Town and Country Planning Act 1990* as amended, as inserted by paragraph 16 of Schedule 7 of the *Planning and Compensation Act 1991*, which states that planning permission may be granted for development carried out before the date of the application without planning permission; for a limited period; or without complying with some condition. Permission may be granted from the date on which the development was carried out or, if in accordance with a permission granted for a limited period, the end of that period.
4. Whilst a number of related and unrelated activities appear to have taken place at the premises, I must deal with the development as applied for. So, I shall refer to the change of use of the existing premises, which is an existing Class A1 use shop, to a Class D1 use cookery club, as 'the development'.
5. The Council had not submitted its suggested conditions by the time of the site visit, so it was given until Monday 29 February 2016 to send its suggested conditions to The Planning Inspectorate, and to send a copy of them to the appellant at the same time. No suggested conditions were received by The Planning Inspectorate by then, so I shall proceed to my decision without them.

Main issues

6. The main issues in this appeal are:

- The effect that the development has and would have on the living conditions of the occupiers of 4 and 6 Stoneham Road, with regard to cooking fumes and smells, and noise and disturbance, and
- Whether the development compromises the aim of local policy to protect individual shops.

Reasons

7. The appeal premises include a single-storey shop, which is attached on one side to the maisonettes at 4 and 6 Stoneham Road. It is situated in a mainly residential area, close to Stoneham Park. There is a newsagent at 8 Stoneham Road, and The Hive, which is a detached café, is close by.
8. The relevant policies of the *Brighton & Hove Local Plan* (LP) are broadly in line with the *National Planning Policy Framework* (Framework), so in accordance with Framework paragraph 215, due weight can be afforded to them.

Living conditions

9. Although cookery classes have been taking place at the premises roughly once a week on a Thursday, the development seeks for classes to also take place on Sundays to Wednesdays. In addition, a 'pop-up' restaurant (use Class A3) would operate on Fridays and Saturdays. As the restaurant use would take place when it would be expected to be most busy, and it would be likely to take up the whole area of the shop, I agree with the Council's view that this would exceed what could reasonably be regarded as ancillary use. Therefore, I shall deal with the application as being solely for Class D1 use as a cookery club.
10. LP Policy SR8 aims to permit the change of use of individual shops from Class A1 use provided that all of 3 criteria are met. LP Policy SR8 criterion c aims for the development to not be significantly detrimental to the amenities of occupiers of nearby residential properties or the general character of the area.
11. Since the unauthorised use of the shop took place, some local residents have raised concerns with the Council about cooking fumes and smells, and noise and disturbance. However, no details of equipment to deal with cooking fumes and smells were submitted with the application. Whilst the appellant plans to incorporate more vegan food to reduce odours, planning permission runs with the land, so a different operator would not be bound to cook such food.
12. A scheme to deal with cooking fumes and smells, including the installation, operation and maintenance of extraction and filtration equipment, could, in some circumstances, be dealt with by means of a condition, if the development were to be otherwise acceptable. However, in addition to the private gardens and the front and back facing windows in the adjoining maisonettes, the flat roof of the shop is very close to first floor windows in the side of the maisonette at 6 Stoneham Road. These windows have opening lights, which could be opened to naturally ventilate the spaces that they light.
13. Due to the restricted space within the unit, and the narrow width of the shared access to the maisonettes at the side and the back of the shop, extract and filtration equipment would be likely to be sited on the flat roof. The measures

to control noise and/or vibration from that plant and machinery, which would be necessary to safeguard the living conditions of nearby occupiers in their homes and gardens, could add to its bulk. This and the tall flue, which could be needed to emit filtered air above the level of the nearby windows, would be likely to have an unacceptably harmful effect on the character and appearance of the building and the street scene in Stoneham Road. So, there is insufficient evidence before me to show that the nearby occupiers' living conditions would be safeguarded without causing harm to the general character of the area.

14. The comings and goings from people arriving, congregating, and leaving the premises in the loose-knit groups associated with the starts and ends of classes, would be likely to cause more noise and disturbance in this generally quiet residential area than the more random comings and goings of shoppers. Because at least some of the cookery classes would be likely to be attended by people during their leisure time, the likelihood is that the premises would be busiest at the times when the neighbouring occupiers would also wish to enjoy their leisure time, such as evenings and at the weekend. As there is almost no outside space associated with the premises, there would also be a greater likelihood of people taking smoking breaks in the street outside, as those people, including the apprentices, would potentially be at the premises for sustained periods. As the premises would operate from 1000 hours until 2230 hours Mondays to Saturdays, and until 1600 hours on Sundays, there would be little respite for the nearby occupiers. Thus, the noise and disturbance resulting from the development would significantly exceed that associated with the shop, and it would be at odds with the general character of the area.
15. Were the hot and cold food 'parties', which may include 'bring your own bottle' and music, every Friday and Saturday night, to amount to ancillary use, the activity associated with these events would be likely to add to the harmful noise and disturbance. The appellant says that she has limited the number of 'customers' to no more than 10 people per night. However, as there is insufficient evidence before me to show that a condition to that effect would not damage the viability of the business, it would not be reasonable to impose it. So, the numbers of people attending the premises would not be controlled.
16. Therefore, I consider that the development harms and would harm the living conditions of the occupiers of 4 and 6 Stoneham Road with regard to cooking fumes and smells, and noise and disturbance. It is contrary to LP Policy QD27 which aims to not grant planning permission for change of use where it would cause a loss of amenity to adjacent residents, LP Policy SU9 which seeks to only permit development that may cause pollution and/or nuisance where amenity is not put at risk, and LP Policy SU10 which aims for new development to minimise the impact of noise on the occupiers of neighbouring properties. It would also be contrary to the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings, and to take account of the different roles and character of different areas.

The shop

17. The supporting text to LP Policy SR8 explains that it is important, particularly for older people, people with disabilities and the very young who cannot easily travel far, that their convenience retail needs can be met within an easy walking distance within their neighbourhood. Also, in terms of sustainable development, it is important that people are not dependent on the use of the

- car for their day to day retail needs. So, LP Policy SR8 aims to provide some protection for corner shops, and to help to ensure that sufficient alternatives exist nearby. This is in line with the Framework which seeks to support local strategies to improve health, social and cultural wellbeing for all, and to deliver sufficient community facilities and services to meet local needs.
18. The shop is situated within a walking distance of roughly 200 m of the Portland Road Local Centre, which includes a range of retail services in up to 40 shops, so LP Policy SR8 criterion a is met.
 19. LP Policy SR8 criterion b aims for it to be adequately demonstrated that an A1 retail use is no longer economically viable in that particular unit. The supporting text says that indicators affecting viability which will be taken into account are: the characteristics of the unit, its location within the neighbourhood, the pedestrian activity associated with the unit and the locality as a whole, and the length of time that the unit has been actively marketed on competitive terms. Applicants will be expected to submit documentary evidence, including a comparison with units in a similar location, to demonstrate active marketing of the unit on competitive terms in support of their proposal.
 20. The shop has a generous frontage, good potential display space, ample glazing for an effective window display, and reasonable storage space and facilities as a shop, so its characteristics are well-suited to retail use. The shop is located near to the heart of the mainly residential neighbourhood, not far from a school, close to a recreation area and churches, and very close to the café and newsagent, which are both in active use. Thus, the shop is well-located to benefit from the footfall from people making trips to other nearby services and facilities. So, although the appellant says that the grocery was not a success, and that this led her to diversify her business, this is insufficient to show that a different retail use with a different business model would not be successful in this particular unit. Moreover, there is almost no evidence before me, to show that the premises are no longer economically viable as a shop. Specifically, there is nothing to show that the premises have been actively marketed as a shop at a competitive rate at all. This is contrary to LP Policy SR8 criterion b.
 21. The appellant aims to offer a multifunctional community facility in line with some of the Council's LP aims to support community cohesion, diversity and inclusion. However, the supporting text to LP Policy SR8 explains that the Policy aims to give better protection to individual shops for similar reasons, so this does not weigh in favour of the development. Thus, I consider that the development compromises the aim of local policy to protect individual shops, contrary to LP Policy SR8, and the Framework.

Other matters and conclusion

22. The petition and written comments submitted by the appellant in support of the development have been taken into account. However, they do not outweigh the planning considerations that have led to my conclusion.
23. For the reasons given above and having regard to all other matters raised, the appeal fails.

Joanna Reid

INSPECTOR
