
Appeal Decision

Site visit made on 26 April 2016

by Alex Hutson MATP CMLI MArborA

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

Decision date: 16 May 2016

Appeal Ref: APP/Q1445/W/15/3139696
31 Davigdor Road, Hove, East Sussex BN3 1QB

- 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 Dong Ming Qin against the decision of Brighton & Hove City Council.
 - The application Ref BH2015/01965, dated 25 May 2015, was refused by notice dated 4 September 2015.
 - The development proposed is "To two bedroom flat".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the application process, the proposal was amended to reduce the number of bedrooms to one. The Council's description of the proposed development on the Decision Notice is for "Change of use from retail (A1) to 1 no bedroom flat (C3) at ground floor level and alterations to southern elevation including the removal of the existing shopfront". This is an accurate description of the proposed development and I have determined the appeal on this basis.
 3. Subsequent to the date of the Council's Decision Notice, the Brighton and Hove City Plan Part One (City Plan) was formally adopted by the Council in March 2016. Nevertheless, the saved Policies of the Brighton and Hove Local Plan 2005 (Local Plan) referred to in the reasons for refusal have not been superseded by the policies contained within the City Plan and the relevant saved Policies of the Local Plan therefore continue to form part of the development plan for the City. I am therefore satisfied that the adoption of the City Plan does not materially alter the reasons for refusal as set out on the Council's Decision Notice and I have determined the appeal on this basis.
 4. The Appellant has submitted plan 1510/08 Rev B as part of the appeal but has made no further reference to it within their evidence. This plan shows a considerably different internal layout to plan 1510/SK that was submitted as part of the original planning application. Having regard to the 'Wheatcroft Principles' it would be unreasonable for me to accept this plan given that it may deprive the consultees of the original proposal the opportunity to provide representations on this plan. In addition, the Council has not provided an assessment of the merits or otherwise of this plan and I therefore cannot be
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certain that they have seen it and have had an adequate opportunity to comment on it.

5. Furthermore, the Procedural Guide for Planning Appeals – England dated 31 July 2015, in Annexe M paragraph M.1.1, sets out that a fresh planning application should normally be made if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal. My determination of this appeal is therefore based on the plans submitted with the original application.

Main Issues

6. The main issues are:

- Whether sufficient justification has been provided to support the loss of the current retail (A1) use;
- The effect of the proposal on the character and appearance of the area; and
- Whether the proposal would provide adequate living conditions for any future occupiers, with particular regard to internal space provision, outlook, daylight and ventilation.

Reasons

Loss of retail (A1) use

7. The appeal property, which is currently being used for storage, occupies the ground floor of 31 Davigdor Road, located on the corner of Davigdor Road and Osmond Road. The upper floors of the building are currently in use as residential accommodation. Whilst Davigdor Road is a busy main road, the area is generally residential in character. I observed that there are bus stops located on either side of Davigdor Road, in close proximity to the appeal property. The presence of these bus stops and the busy nature of Davigdor Road is likely to increase the level of pedestrian activity in the vicinity of the appeal property.
8. Saved Policy SR8- Individual Shops, of the Local Plan, sets out that changes of use for individual shops will be permitted where, amongst other things, it has been adequately demonstrated that an A1 retail use is no longer economically viable in that particular unit. Saved Policy SR8 further sets out that indicators affecting economic viability that should be taken into account, include the characteristics of the unit, its location, the pedestrian activity associated with the unit and the length of time the unit has been actively marketed on competitive terms.
9. Notwithstanding the Appellant's claim that the appeal property may not have been in active retail use for the last 12 years, no detailed viability assessment, in accordance with the above requirements, has been put forward as evidence for further consideration to justify the proposed change of use. This is a fundamental requirement of saved Policy SR8 of the Local Plan and failure to do so is clearly in contravention of this saved policy.
10. I acknowledge the Appellant's claim that the Council has previously offered funding to change the use of the appeal property to residential. Nevertheless, this claim has not been substantiated with any evidence to allow me to consider this matter further, especially in light of the Council's refusal of the

planning application that substantially contradicts this claim. In addition, even if some local shops have recently closed, I have not been provided with any evidence that these alleged closures involved the Council's consent for their change of use that would allow me to make any informed comparisons between those shop closures and the appeal at hand. Finally, whilst on-line delivery of shopping may be available in the area, I have no substantive evidence to demonstrate that the unit could not provide a shop that would cater for people's daily needs that could not be met by online shopping that generally takes in excess of a day to be delivered. These arguments are not therefore, in my opinion, material planning considerations to which I can afford any significant weight.

11. I therefore conclude that the proposal has not provided adequate justification for the loss of the current retail use, contrary to saved Policy SR8 of the Local Plan. The proposal would also conflict with the broad aims and principles of the National Planning Policy Framework (The Framework), that seek planning to support a strong economy.

Character and appearance

12. The appeal property occupies a prominent position on the corner of Davigdor Road and Osmond Road. Whilst there are some modern blocks of flats in the vicinity of the appeal property, buildings in the area, including the appeal property and adjoining buildings, generally display a traditional character and appearance. Front boundary treatment in the vicinity of the appeal property generally comprises low brick walls. The existing shop front, comprising bay windows with large panes of glass, provides an important element of depth and symmetry and adds a significant level of visual and historic interest to the appeal property. The existing shopfront therefore, in my opinion, makes a strong and positive contribution to the overall character and appearance of the streetscape and area.
13. The proposal would replace the traditional shopfront with a frontage that would extend on a single plane across the full width of the appeal property. Two multi-paned windows and a front door offset from the centre point of these two windows, would be incorporated into the proposed frontage, with crenellations added to its roof.
14. The loss of the traditional shopfront and the modern appearance of the proposed frontage and its lack of depth and symmetry, in combination with the proposed crenellations that do not feature on any nearby buildings, would fail to respect the existing traditional character of the appeal property. Furthermore, the lack of any proposed front boundary treatment to separate the private space at the front of the proposal from the public realm, would also appear at odds with the prevailing pattern of development in the area.
15. The proposal would therefore, in my judgement, appear as an incongruous, discordant and unsympathetic form of development that would result in significant and demonstrable harm to the character and appearance of the appeal property, streetscape and area.
16. The proposal would therefore be contrary to saved Policy QD14- Extensions and Alterations, of the Local Plan, that requires, amongst other things, development to be well designed, sited and detailed in relation to the character of the host building and surrounding area. This policy is consistent with broad

aims and objectives of the Framework that seeks planning to secure high quality design and to take account of the different roles and character of different areas.

17. The proposal would also be contrary to the guidance within the Council's Supplementary Planning Document 12- Design Guide for Extensions and Alterations 2013, which advises that extensions and alterations, including to the front of a building, should not detract from the appearance of the property or the general character of the street.

Living conditions

18. The proposal would have an internal floorspace of approximately 36 square metres. The evidence suggests the intention is to provide residential accommodation for two people. The submitted plans would support this intention in light of a double bed shown within the proposed bedroom. Whilst I have not been provided with any local internal space standards, the overall floorspace would be excessively modest for two occupiers. Furthermore, the proposed layout would provide limited circulation space in each of the proposed rooms which would be reduced further as a result of the basic furniture requirements of any future occupiers. The proposal would therefore provide a poor level of internal space provision that would result in an overwhelming sense of enclosure and a cramped living environment for any future occupiers. In addition, the lack of windows in the kitchen, and the resulting poor levels of outlook that would arise as a result, would further contribute to the sense of enclosure and cramped living environment.
19. As a result of the single aspect of the proposal and the proposed internal layout, the proposed shower room and kitchen would likely receive very little, if any, natural daylight. Furthermore, it is unclear from the plans and from any supporting evidence, how the proposed daylight pipes within the kitchen area would work and what levels of natural daylight they would provide to assist with overcoming this matter. Based on the evidence before me, I therefore consider that proposal would result in a dark and gloomy living environment for any future occupiers.
20. The proposed bathroom would lack any windows for ventilation, though given it would be located adjacent to an external wall, this room could reasonably be ventilated through the use of an extraction fan. However, in addition to the proposed kitchen lacking any windows, it would not be located adjacent to an external wall. Furthermore, whilst the plans suggest some form of ventilation system would be installed, it is unclear from the plans and from any supporting evidence, how the proposed ventilation system would work and to what extent it would assist with mitigating any condensation or odours that would arise from cooking or other activities in the kitchen. Based on the evidence before me, I consider that the proposal would result in a poor level of ventilation for any future occupiers that could have serious implications for their health.
21. I therefore conclude that the proposal would provide wholly inadequate living conditions for any future occupiers, with particular regard to a poor level of internal space provision, a poor level of outlook, a poor level of daylight and a poor level of ventilation.
22. Whilst the Council has not refused the planning application in respect of the privacy of any future occupiers, this is raised as a concern within the Officer's

Report. Given the lack of any proposed front boundary treatment and given the proposed windows would directly face the space to the front of the appeal property, any passing pedestrians could obtain views directly into these windows from a very close proximity. The proposal would therefore clearly fail to provide adequate measures to maintain a reasonable level of privacy for any future occupiers. This matter also weighs substantially against the proposal.

23. The proposal would therefore be contrary to saved Policy QD27- Protection of Amenity, of the Local Plan, that seeks to resist development or a change of use where it would cause material loss of amenity to any future users or where it is liable to be detrimental to human health. This policy is consistent with the broad aims and objectives of the Framework, that seek planning to ensure a good standard of amenity for all future occupants of land and buildings.

Other matters

24. The proposal would make a limited but useful contribution to housing supply in the City. However, I consider that the harm that would arise to the character and appearance of the area and to the living conditions of any future occupiers would significantly and demonstrably outweigh the modest benefit of providing one new dwelling.

Conclusion

25. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

Alex Hutson

INSPECTOR

