

Appeal Decision

Site visit made on 4 October 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 3rd November 2016

Appeal Ref: APP/T1410/W/16/3152137
182-184 Seaside, Eastbourne BN22 7QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Greatglen Estates Limited against the decision of Eastbourne Borough Council.
 - The application Ref PC/160332, dated 23 March 2016, was refused by notice dated 16 May 2016.
 - The development proposed is change of use from retail (A1) to residential (C3).
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class M(a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use from Class A1 (retail) to Class C3 (residential) at 182-184 Seaside, Eastbourne BN22 7QR in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph M.2(1) of the GPDO and subject to the following additional condition:
 - 1) The dwellinghouses shall not be occupied until details for the storage of refuse have been submitted to and approved in writing by the local planning authority. The approved refuse storage arrangements shall be provided prior to the first occupation of the dwellinghouses and shall be retained and used for no other purpose thereafter.

Procedural Matters and Main Issue

2. I have based the description of the proposal used in the formal decision above on the contents of the covering letter dated "6 June 2014" that accompanied the application, in line with the answer to question 4 on the application form.
 3. Having regard to the limitations set out in Paragraph M.1 of the GPDO, and subject to obtaining prior approval, and the procedural requirements set out in Paragraph W of the Order, I am content that the change of use from retail to two Class C3 dwellinghouses comes within the scope of the permitted development rights available under Class M. With regard to the five conditions set out in Paragraph M.2(1), which establish the basis for the consideration of prior approval applications made under Class M, the Council's sole matter of concern relates to condition (d)(ii), namely 'whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the
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impact of the change of use ... where the building is located in a key shopping area, on the sustainability of that shopping area ...'. I shall therefore treat the provisions of condition M.2(1)(d)(ii) as being the main issue for consideration.

Reasons

4. The development would involve the change of use of the front half of the ground floor of the premises at 182 and 184 Seaside (Nos 182 and 184) from a shop into two self-contained flats. The application has been made on the basis that the conversion scheme would require no external alterations, albeit that the internal layout of the premises would need to be changed. The rear of the ground floor and the whole of the first floor of Nos 182 and 184 are subject to an express planning permission (Council reference 120603) for six flats. The submitted existing plans suggest that the express permission has been implemented.
5. The shopping centre that the premises are in is classified by the Council as being a 'district shopping centre' under the provisions of Policy D4 of the Eastbourne Core Strategy Local Plan of 2013 (the Core Strategy). This centre, as shown on the adopted Policy Map, extends along both sides of Seaside, albeit that the runs of commercial premises are interrupted by Seaside's various junctions with side streets or other non-commercial premises, such as the extensive Carter Barracks, which have been excluded from the designated district centre. This shopping centre is characterised by a large number of small units, occupied either by a diverse range of Class A1 independent businesses or various other Class A and non-Class A commercial occupiers. The 'Sainsbury's Local' store is a notable exception because of its comparatively large size.
6. Nos 182 and 184 are currently vacant and it is submitted that they were last occupied by a retail business in 2012 and have been on the market since July 2011. At the time of my site visit a marketing board was visible, albeit not prominently, and its wording refers to the premises being marketed on an 'all enquiries' basis, i.e. not being limited to a specified use such as one falling within Class A1. A brief summary of the marketing exercise is set out in an email from the appellant's marketing agent¹ and this states that 1,500 applicants have been advised of the premises' availability. It is submitted that the marketing campaign has resulted in seven viewings, with no offers being made. While the Council is critical of the submitted marketing evidence, it has provided no expert evidence of its own to counter that of the appellant. Notwithstanding the limitations of the appellant's evidence, given its specialist nature, I find that it attracts more weight than the Council's submissions.
7. I found this shopping centre to be busy and currently there is a low vacancy level. Given the large number of small units and their diverse occupation, I consider it very unlikely that a residential conversion at Nos 182 to 184 would have any significant effect on this centre's attractiveness as a shopping destination.
8. Nos 182 and 184 have been vacant for around four years and I consider that if demand for premises of this type was greater than their supply then a new occupier would have been likely to have come forward by now. I recognise

¹ The Ross and Co email of 27 October 2015 contained within Appendix 1 to the appellant's grounds of appeal

that this development would result in some fragmentation of the retail frontage in this part of Seaside, however, as I have indicated above, breaks in the commercial frontage occur nearby and they do not seem to be affecting the vitality of this shopping centre. I observed the conversions at Nos 78 and 92 and found the interruptions to the active retail frontage arising from their presence to be having a very limited effect on the area's overall character as a shopping street. The premises' long term vacancy is not contributing to the shopping centre's vitality and their empty appearance is not presenting a 'welcoming façade'. I find that the reoccupation of Nos 182 and 184 as dwellinghouses would improve the premises' appearance and would not result in the creation of an unwelcoming façade.

9. For the reasons given above I conclude that this development would not be harmful to the sustainability of the Seaside district shopping centre. Accordingly this change of use would not be an undesirable one for the purposes of condition M.2(1)(d)(ii) of the GPDO.
10. Sub-paragraph 10 of Paragraph W of the GPDO explains that in determining Class M applications regard shall be paid to the National Planning Policy Framework (the Framework) '... so far as relevant to the subject matter of the prior approval, as if the application were a planning application ...'. As I have found that this development would not be harmful to the sustainability of the shopping centre, there would be no conflict with paragraph 23 of the Framework or any other paragraphs in section 2 of the Framework (Ensuring vitality within town centres).
11. The Council contends that there would be conflict with Policy D4 of the Core Strategy and saved Policy SH7 of the Eastbourne Borough Plan 2001-2011, which was adopted in 2003. However, as the principle of this development is already established by the GPDO, only limited regard can be paid to any relevant development plan policies.
12. In any event I find Policies D4 and SH7 to be of limited relevance. This is because Policy D4 seeks to protect 'larger units' from changes of use and as the floor area involved is quite modest I do not consider that this proposal affects a larger unit for the purposes of Policy D4. The other elements of Policy D4 address new retail development rather than the introduction of residential accommodation and are therefore not relevant. Policy SH7 seeks to maintain the vitality and viability of local shopping centres by discouraging the loss of Class A1 premises, however, reference is only made to changes of use involving Classes A2 or A3. Policy SH7 is therefore not applicable to a residential conversion.
13. The parties have also referred to Policy C3 of the Core Strategy which identifies the policy approach for the wider Seaside Neighbourhood. Amongst other things this policy promotes greater economic activity through the regeneration of the commercial areas and the provision of new housing. Given the limited impact this development will have upon the sustainability of the commercial area I find there to be no particular conflict with Policy C3.

Conditions

14. Paragraph W13 of the GPDO states that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval scheme. I consider it necessary to impose a condition concerning

the storage of refuse in order to safeguard the appearance of the area and the living conditions of the occupiers of neighbouring properties and the development.

Conclusion

15. For the reasons given above I conclude that the appeal should be allowed and approval granted. In granting approval the appellant should note that under condition M.2(3) development under Class M is permitted subject to conditions requiring it to be completed within three years, starting with the prior approval date, and the permitted development shall be used as dwellinghouses within the meaning of Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose, except to any extent that the other purpose is ancillary to the primary use as such a dwellinghouse.

Grahame Gould

INSPECTOR