



Appeal Decision

Site visit made on 3 June 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 17 July 2019

Appeal Ref: APP/Q1445/W/19/3224285 15 Caburn Road, Hove BN3 6EF

- 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 Dr Katie Wynn against the decision of Brighton & Hove City Council.
 - The application Ref BH2018/00014, dated 2 January 2018, was refused by notice dated 12 September 2018.
 - The development proposed is change of use from Residential Institution (C2) to Dwellinghouses (C3).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has questioned the planning status of the building as a care home. However, this is not a matter for me to determine under section 78 of the Town and Planning Act 1990. It is open for the appellant to apply under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of the appeal. Consequently, I have dealt with the appeal on the basis of the description of development set out in the application.

Main Issues

3. The main issues are;
 - Whether the change of use of the building from a Residential Institution (C2) to Dwellinghouses (C3) is justified with regard to local and national planning policies,
 - Whether the proposal makes adequate provision for any additional need for affordable housing,
 - Whether future occupiers would be likely to experience acceptable living conditions in terms of usable living space, privacy and outlook, including the effects of the outlook on the privacy of nearby residents, and
 - The effect of the proposal on the character and appearance of the area.

Reasons

Change of use

4. The building has been used as a care home, but this has not been in operation since March 2013, according to the appellant. The building also adjoins 203 Dyke Road which provided floorspace for the care home. Policy HO11 of the Brighton and Hove Local Plan (2005) (LP) seeks to retain residential care and nursing homes which are realistically capable of reaching the respective standards for such provision in order to allow for an adequate supply in the city.
5. The appellant's position is that the care home use is not viable and the building was not designed for this use. It identifies that the Council, under its Adult Services responsibilities, withdrew its funding for clients at the care home due to poor infrastructure, although the evidence for this is not provided. It is also noted that the building lacks facilities such as stairlifts to all floors and is suggested that current amenity space standards would restrict occupancy to unviable levels. The building has also been split from No 203 Dyke Road, which I note supplied additional floorspace.
6. I understand that the building has been vacant for a significant period creating a dilapidating state and that there are difficulties and expenses in bringing the care home back into use. However, Policy HO11 seeks to retain those which are realistically capable of being brought back into use. Although I am aware that the National Planning Policy Framework (2019) (the Framework) supports the development of under-utilised buildings and making the optimal use of sites, I am not convinced that the information provided represents clear evidence of a lack of viability or unsuitability. I note that No 203 was granted permission for use as a House of Multiple Occupancy (HMO) in 2013, however I do not have all the evidence of this before me, and I also note that permission was granted more recently in 2016 for its use as a residential institution. Whilst I understand the building may have been empty for a significant period, I do not have full details of marketing or a formal appraisal which demonstrates that future care home use would not be viable.
7. Therefore, I do not consider that it has been demonstrated that the building could not be realistically capable of being brought back into use as a Residential institution (C2), and therefore C3 residential use is not justified with regard to local and national planning policies. Consequently, the proposal is contrary to Policy HO11 of the LP which requires this to be demonstrated before allowing other uses.

Affordable housing

8. Notwithstanding the conflict with the retention of such uses, LP Policy HO11 also requires that where the loss is considered acceptable, that the conversion of larger homes will be expected to contribute to affordable housing, in accordance with Policy HO2 of the LP and Policy CP20 of the Brighton and Hove City Plan Part 1 (CP). Such a contribution is required on a net gain in dwellings, whether conversion or new build.
9. The proposal does not have a mechanism secured to make a contribution to the provision of affordable housing. Policy CP20 indicates that affordability is a major issue in the city, but also sets out how the policy could be applied

flexibly where justified. These relate to where detailed matters of local need, accessibility, viability and impact on other planning objectives and achieving a successful housing development may be material to overall decisions. The appellant has not provided justification in line with this potential flexibility and no provision of affordable housing is made. Whilst the appellant questions whether it is reasonable to negotiate affordable housing contributions before a scheme is granted planning permission, it is necessary to determine whether otherwise unacceptable development could be made acceptable in line with paragraph 54 of the Framework.

10. Therefore, the proposal does not sufficiently justify why it should not contribute to the provision of affordable housing in line with policy. Consequently, on the balance of evidence, I am unable to conclude that the proposal should not contribute to the provision of affordable housing. Consequently, it is contrary to Policy CP20 of the CP which requires such provision on all sites of 5 or more dwellings (net).

Living conditions for future occupiers

11. Whilst the Council does not currently have adopted floorspace standards, the quality of the living space is also important. I have regard to the appellant's comments that the design and layout has been thought out and that a creative and appropriate design solution has been sought. However, whilst the submitted plans indicate that there may be sufficient storage and circulation in some units, I concur with the Council that in Flats 2, 5 and 7 in particular, this has not been provided. I recognise that the layout of furniture is not fixed, however it highlights the cramped nature. There is limited space between items and an unacceptably tight relationship within the kitchen of Flats 2 and 5, which also serves as the route to the bedroom.
12. I also note from the submitted plans that there are areas of limited head height on the top floor. This is likely to severely restrict movement and would result in limited usability. The proposal may not be a new build, but these would be new dwellings and future occupiers would require appropriate quality living space in all units.
13. The proposal would introduce two new dormer windows to the rear. These would be the only windows serving these bedrooms on the top floor and would be in close proximity to the existing windows in No 203. Whilst there is already a level of overlooking to the rear of the buildings, this would afford close views to the detriment of privacy of occupants of these rooms and those below. Given that these are the only windows to these proposed rooms, the option to fix these shut and introduce opaque glazing would harm the living conditions of future occupiers by preventing an appropriate outlook and creating an acute sense of enclosure.
14. Therefore, the proposal would not provide acceptable living conditions for the future occupiers given the cramped form of accommodation with limited circulation space and usability for future occupiers when taken as a whole. It would also result in overlooking of No 203. Consequently, the proposal is contrary to Policy QD27 of the LP. This prevents development which will cause material nuisance and loss of amenity to occupiers.

Character and appearance

15. The building is a part three storey building in a corner position. It is an attractive substantial Edwardian property with a more modern side extension. The area is not a Conservation Area, and the building is not listed, but there is a strong defined character in the street, with gable features and consistent proportions. The proposal has been designed to respect and mimic the character, materials and architectural details of the surrounding area. However, whilst hipped to reduce bulk, the proposal would result in a consistent roof line between the older main building and newer side extension. This would reduce its subservient appearance and increase the scale of the building. The proposal would also result in 3 different dormer window styles, in different sizes on the front (west) elevation. The extension upwards of the existing bay and gable would unbalance the proportions and appear overly prominent. This would be accentuated by the different sizes of dormers in the roof form.
16. Whilst subordinate in design, the proposed dormer to the north frontage would appear unrelated in scale, size or location to the rest of the elevation. This is also an important elevation in the streetscene on this corner property and would appear congruous within the host building.
17. My attention has been drawn to a variety of other roof alterations in the area, although I do not have full details that led to these proposals being accepted. In any event, the fact that apparently similar development may have been permitted is not a reason, on its own, to allow unacceptable development. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.
18. Therefore, the proposal would harm the character and appearance of the building and surrounding area due to the overall scale of the extension and the additional features at roof level. Consequently, the proposal is contrary to Policy QD14 of the LP and Policy CP12 of the CP. Taken together, and amongst other objectives, these require development to be well designed, sited and detailed in relation to the property to be extended and raise the standard of design in the city.

Other Matters

19. I have had regard to the evidence provided by the appellant of other proposals where changes of use have been permitted by a Council¹ or at appeal², including affordable housing considerations. However, these appear to be different existing uses, within another authority and not directly comparable to the considerations of this appeal. I do not have the full information that lead to the decisions and in any event, they don't lead me to a different decision given the harm found. I have therefore given these little weight.

Planning Balance

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with CS policies CP12 and CP20 and LP policies HO11, QD14 and QD27. I therefore consider that the proposal conflicts with the development

¹ Southend-on-Sea Borough Council references 18/01208/FUL and 18/00709/FUL

² Appeal Reference APP/D1590/W/15/3005995

plan as a whole, although I reduce the weight to any conflict with CS Policy CP20 given its inconsistency with paragraph 63 of the Framework, in regard to the threshold for which the affordable housing provision is sought.

21. The Council states that it cannot demonstrate a five year supply of deliverable housing sites against their local housing need, with a supply of about 4.5 years. This has not been disputed by the appellant. Given the position in respect of housing land supply, Paragraph 11 d (ii) of the Framework applies; namely that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. The proposal would result in the creation of 8 new dwellings in an accessible location which would make a small contribution to the supply of housing. It would also make efficient use of an under-utilised previously developed site. However, the proposal would lead to the unjustified loss of a Residential Institution, result in residential accommodation which would not provide acceptable living conditions for future occupiers. It would also harm the appearance of the character and appearance of the area and does not provide affordable housing. The harm would be significant and long lasting. Therefore, the adverse impacts of granting permission for the scheme as proposed would significantly and demonstrably outweigh the benefits of the scheme in this case.
23. Overall, taking account of the Framework and the benefits of the development and all other matters raised, I find that material considerations do not indicate that planning permission should be granted for the development, which is in conflict with the development plan.

Conclusion

24. For the reasons given above, I conclude that the appeal should be dismissed.

Tim Crouch

INSPECTOR