
Appeal Decision

Site visit made on 26 November 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 December 2019

Appeal Ref: APP/U1430/W/19/3231564

De La Warr Heights, 1 Marina, Bexhill TN40 1DA

- 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 E Tannen of Mardan (Bexhill) Limited against the decision of Rother District Council.
 - The application Ref RR/2019/230/P, dated 30 January 2019, was refused by notice dated 22 May 2019.
 - The development proposed is change of use of the existing ground floor from commercial to residential, to form 4 residential units.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the existing ground floor from commercial to residential, to form 4 residential units, at De La Warr Heights, 1 Marina, Bexhill TN40 1DA, in accordance with the terms of the application ref RR/2019/230/P, dated 30 January 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Unless otherwise modified by compliance with the condition below, the development hereby permitted shall be carried out in accordance with the following approved plans: PL02; PL 020 Rev B; PL 021 Rev A; PL 022.
 - 3) Prior to any works being undertaken to the external face of the building in relation to the development hereby permitted, details, including samples of the materials to be used, and 1:10 scale drawings showing the designs and exact locations of windows, doors, vents, utility meters and boxes on the frontage, shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.

Procedural Matter

2. During the course of the appeal the Council adopted its Development and Site Allocations Local Plan 2019 (the DSA), with some modifications made to the policies it contains. I have taken the DSA into account together with any relevant modifications to any previously emerging Policies cited by the Council in my reasons below.

Main Issues

3. The main issues are:

- the effect of the development on the character and appearance of the area, including whether it would preserve or enhance the character or appearance of Bexhill Conservation Area (the Conservation Area);
- whether the development would provide acceptable living conditions for future occupants with regard to privacy; and
- the effect of the development on the vitality of the town centre.

Reasons

Character and appearance

4. The site is located within the Conservation Area. This covers a mix of commercial and residential streets laid out in a grid pattern adjacent to the seafront, chiefly characterised by late nineteenth/early twentieth century development. In my view the significance of the Conservation Area in large part resides within the planned layout and architectural character of these streets, as too the presence of the Grade I listed De La Warr Pavilion to the south of the site, and the historic relationship of each to the seaside location.
5. The site occupies the ground floor of a large building which principally serves as a block of flats. The frontage is curved and fronts the junction of Sackville Road with Marina. Sackville Road is characterised by the presence of long parades of shops, whereas the adjacent section of Marina is chiefly characterised by the presence of buildings in residential uses. Therefore, the site is readily perceived as occupying a point of transition within the streetscene, standing between two areas whose visual character and prevailing use differs.
6. The linear shopping parades which line Sackville Road have a formal character which is both consistent and continuous, and which, in combination with the buildings of which they form part, provides the street frontage with a distinctive and unified visual identity. This makes a strongly positive contribution to the significance of the Conservation Area.
7. The building of which the site forms part does not achieve a high level of visual integration with the frontage in Sackville Road. This is due to the substantial difference in the scale and external appearance of the building, and the elevation of the ground floor high above the level of adjacent shops. The substantial curving of the building away from the Sackville Road frontage further accentuates the lack of visual continuity. In these latter regards the site differs from The Landmark, another large modern building opposite, whose orientation and arrangement at ground floor relates more directly to the adjacent historic frontage.
8. Though many of the same factors hold true for the visual relationship between the site and the frontage on Marina, the fact that the ground floor occupies a similar level to that in adjacent buildings, provides a higher level of integration than exists with Sackville Road.
9. In terms of both Sackville Road and Marina however, the relationship between the site and the broader street scene is harmed by the fact that it is boarded

- up. Indeed, it has been since the building was constructed in 2008. The current condition of the site blights both the appearance of the Conservation Area, and that of the streetscene more generally. Moreover, as the site has been in the same condition for the whole of its existence, it always has done.
10. The proposed development would see the site opened up and brought into active use, which would provide an immediate visual benefit. Though the Council considers that this would result in the loss of an active frontage, given that the frontage has, in effect, always been blank, there would be no such loss. Furthermore, the proposed development would feature windows, which, even if fitted with blinds, would provide a more active frontage than currently exists.
 11. Drawing attention to the fact that the site is included within the Primary Shopping Area for purposes of Policies BEX12 and BEX13 of the DSA, the Council additionally considers that the development would harm the lively and vibrant character of the street. However, the site has never contributed to this character, but rather it has done the opposite. Furthermore, in view of the transitional position the site occupies, and the somewhat better relationship of the frontage with Marina than Sackville Road, the development would not appear at odds with its setting when viewed within the broader streetscene. Moreover, a direct relationship would also be formed between the site and the several storeys of flats which already exist immediately above it.
 12. I agree with the Council's view that the effect of the development on the setting of the De La Warr Pavilion would be neutral. This is because the frontage of the site plays little or no role the principal views within which the Art Deco design of the building is best appreciated at present, and this would remain unchanged.
 13. For the reasons outlined above I conclude that the development would not have an unacceptable effect on the character and appearance of the area, and that it would preserve and moderately enhance the character and appearance of the Conservation Area. It would therefore comply with Policies OSS4 (iii) and EN3 of the Rother Local Plan Core Strategy Adopted 29 September 2014 (the CS), which require development to respect the character and appearance of the locality; Policy BX1(i) of the CS, which seeks to conserve and enhance the town's distinct and independent character; Policies BX2(vi) and EN2 of the CS, which each seeks to secure development sensitive to the historic environment, including the Conservation Area; Policy BEX13 of the DSA, insofar as, having regard to the type and characteristics of other uses in proximity to the site, the change of use would not harm the shopping character of the area; and no obvious conflict would arise with Policy BEX15 of the DSA which identifies Bexhill Cultural Area, which in particular seeks to resist the loss of existing arts, culture and tourism uses.

Living conditions

14. The height of the windows serving the new dwellings would vary considerably across the frontage, relative to the level of the adjacent pavement. A raised terrace and screening would lie between. Given that windows across the northern half of the frontage would be positioned high up, in some cases above the head height of passing pedestrians, it is unlikely that any clear or easy views into the proposed dwellings would exist.

15. The situation would differ across the southern half of the frontage where relative levels begin to even out. Notwithstanding the intervening area of terrace and screening, views from the pavement through the windows of the proposed dwellings would be possible if passers-by chose to look. I note however that this is true of the ground floor windows within the front elevations of the majority of buildings in residential uses fronting Marina. It appears quite probable that some of these windows serve bedrooms. Indeed, the arrangement is not unusual within an urban context. Neither is the fitting of blinds to prevent such views from outside. As such the level of privacy that would be enjoyed by future occupants would not be unacceptable when considered in context.
16. For the reasons outlined above I conclude that the development would provide acceptable living conditions for future occupants with regard to privacy. The development would therefore comply with Policy OSS4 (i) of the CS, which requires that developments meet the needs of future occupiers, including by providing appropriate amenities.

Vitality

17. The 2 units which make up the site have an approved Class A3 use. In this regard I note that the Town and Country Planning (Use Classes) Order 1987 has been amended since the original grant of planning permission, and that what was Class A3 has been split up. Whilst the Council thus indicates that it would accept any use falling within Classes A3, A4 or A5, its specific reference to Class A4 within the decision notice was presumably an error. Nonetheless, and as outlined above, since its construction the site has not been subject of any active use.
18. Policy EC7 of the CS sets out the Council's strategy to support the town centre of Bexhill, partly by maintaining and increasing the proportion of retail spend. Policy BEX12 of the DSA similarly seeks to make the town centre a focus of retail and other town centre uses, resisting the loss of significant town centre uses. Though the Council thus clearly wishes to the town centre as a focus for commercial uses, active commercial use of the site itself has only ever existed in theory. Its use has never made a contribution to retail spend, and if anything, retail spend might actually have been depressed by the blighting effect of the site's appearance within the streetscene. It follows that the use cannot be considered 'significant' within the context of the existing town centre uses at large.
19. Moreover, the appellant has submitted a Marketing and Viability Statement in support of the proposal, which documents marketing of the site undertaken by 3 different agents since 2008. The steep reduction in the rental asked for the units from £70k and £45k in 2008 to £25k and £12.5k in 2011 may indicate that the initial marketing was unrealistic, even taking into account the economic downturn. Even so, a considerable period of time has passed since 2011, and the current agent confirms that the level at which the site is currently being marketed is reasonable. Though the Council has expressed uncertainty in the regard, no evidence has been set before me which contradicts the agent's statement, thus I have little reason to question it. Furthermore, regardless of the level of interest the site may have generated during the past decade, it remains the case that this has not had any positive

outcome. Consequently, no apparently viable demand for the units has been shown to exist.

20. I acknowledge that the units are shells, and thus that an incoming user would be required to invest in fitting out. This might have deterred some potential users with limited funds. At the same time however, this would have provided other potential users with a blank canvas, avoiding the inconvenience and cost of stripping out fittings which were not required. On this basis I attach little weight to the fact that the units are shells.
21. The decision notice cites conflict with saved Policy EM13 of the Rother District Local Plan Adopted July 2006 (the Local Plan), which, consistent with Policy EC7 of the CS, seeks to resist loss of significant existing ground floor retail floorspace falling within Use Class A1. I note that Policy BEX13 of the DSA similarly seeks to protect the predominant shopping role and character of the area by controlling the loss of Class A1 and A2 uses. However, as the approved use of the site does not fall within either Class A1 or Class A2, the 'protection' provided by these policies is not applicable. This is true regardless of whether or not a permitted change to Class A1 and A2 exists from one of the uses to which the Council considers the site could currently be put, as no such use is active, and no such change has occurred.
22. Policy BEX13 of the DSA further allows for non-specified changes of use subsequent to a number of considerations. Principal amongst these is whether there would be harm to the shopping character, diversity and vitality of the area. In view of my reasons above, including in relation to character and appearance, no such harm would arise. Having further regard to the type and characteristics of other uses in proximity to the site, the development would not lead to an over-concentration or clustering of non-retail uses that would be harmful. And, lastly, though Policy BEX13 gives support for retention of 'larger' retail units, the site has never actively served such a use. Insofar as Policy BEX13 of the DSA is relevant therefore, I find that the development would be compliant.
23. I have additionally taken into account that fact that occupants of the proposed development would be likely to make use of services in adjacent streets. As such they would both do more to support the vitality of the town centre, and to increase retail spend, than the existing approved use of the site ever has, or indeed than it would if it remained unused and boarded up.
24. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), I conclude that whilst the development would run contrary to the Council's general objective of focusing commercial uses within the town centre, as set out in Policy EC7 of the CS and saved Policy EM13 of the Local Plan, this would cause no harm to the vitality of the town centre, and some modest benefit may in fact arise. Consequently, I conclude that the effect of the development on the economic vitality of the town centre would be acceptable. Though both the officer report and the Council's appeal statement additionally referenced Policy DCO1 of the DSA, this policy was subsequently modified, and in consequence it is not applicable within defined Town or District Centres.

Conditions

25. I have imposed conditions setting out the time limit for commencement of development and identifying the approved plans for sake of certainty.
26. I have also imposed a condition requiring agreement of the materials and design details of components to be used on the exterior of the building. I have used a modified wording to that used by the Council for clarity, and given that a pre-commencement condition is not essential in this instance. The condition is required in order to ensure that the external appearance of the development complements its setting, including the rest of the building of which it forms part.

Conclusion

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

Benjamin Webb

INSPECTOR