
Appeal Decision

Site visit made on 11 November 2020

by Michael J Muston BA(Hons) MPhil MRTPI

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

Decision date: 15 December 2020.

Appeal Ref: APP/Q1445/W/20/3254326

148 Portland Road, Hove BN3 5QL

- 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 Nick Bucknall of Portland Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/00521, dated 13 February 2020, was refused by notice dated 11 May 2020.
 - The development proposed is the partial demolition of the existing office building and the erection of a part two, part three storey building providing (B1) office space and 4 one-bedroom flats (C3), incorporating a part change of use of (B1) office space.
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Decision

1. The appeal is dismissed.

Main issues

2. The main issues in this case are:-
 - the effect of the proposed development on the provision of employment space in the city;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed flats would provide acceptable living conditions for future occupiers of the proposed flats, with particular regard to the size of the units and outlook.

Reasons

Employment space

3. The appeal site currently contains over 200 square metres of employment space within Use Class B1, arranged as nine separate units over three floors. It is common ground between the parties that these were all occupied at the time the appeal was lodged, although the appellant tells me that, at that time, the occupiers of one unit had given their notice. The appeal proposal would involve the loss of one of these nine units, amounting to approximately 55 square metres of employment floorspace.
4. Policy CP3 of the Brighton & Hove City Plan Part One (2016) (CP) says, amongst other things, that the loss of unallocated sites or premises in, or

whose last use was, employment use (Use Classes B1-B8) will only be permitted where the site or premises can be demonstrated to be redundant and incapable of meeting the needs of alternative employment uses. The appeal proposal would be contrary to this policy. The appellant suggests that Policy CP3 only relates to the loss of whole sites or premises, and that this proposal would only result in a partial loss. However, there are nine units in employment use on site and one whole unit would be lost. To my mind, this would amount to the loss of premises currently in employment use.

5. The appeal scheme proposes to modernise the retained office space on the ground floor of the new building. The appellant argues that better insulation, better natural light, improved kitchen and toilet facilities and an improved appearance should be taken to outweigh any loss of floorspace. However, the existing units are all occupied, and I have no evidence before me to suggest that they are unsatisfactory as they stand. I do not consider that the proposed improvements would offset the loss of about 55 square metres of B1 floorspace, even if the unit to be lost does only employ two full time workers at present.
6. The Council says that there is a shortage of B1 office space within the city and that the remaining stock of offices is under pressure from changes of use carried out under permitted development rights. The appellant argues that the pandemic has reduced the demand for office space and that this should be taken into account. Whilst this is undoubtedly true at present, it is not yet clear whether this will be a permanent or temporary change. I do not consider that it constitutes a reason to set aside development plan policy at this time.
7. I conclude that the proposed development would have an adverse effect on the provision of employment space within the city, contrary to Policy CP3 of the CP.

Character and appearance

8. No 148 Portland Road is at the end of a terrace of three storey (two full storeys plus one in the roofspace) buildings that front onto the commercial centre along Portland Road. The appeal building also fronts Modena Road, where it steps down, first to two storeys and then to a single storey where it adjoins the boundary with 34 Modena Road. Modena Road itself is a residential road, lined with two storey houses of varied designs but approximately equal height. I agree with the previous Inspector in June 2018 (APP/Q1445/W/17/3191217) that the existing buildings on site form a successful transition from Portland Road to the scale of the two storey properties on Modena Road.
9. The appeal proposal would involve replacing the existing buildings fronting Modena Road with a three storey block, topped by a pitched, hipped roof, with lower two storey flat-roofed sections on either end. The main three storey section would extend close to the rear elevation of the main part of No 148 and would have its eaves well above the eaves level of the existing building. It would also be nearly as high as the main part of No 148, even once the full pitched roof of that building had been reinstated. Given its bulk, height and location, the proposed three storey block would compete visually with the main building, to an even greater extent than the previous appeal scheme.
10. The proposed building would adjoin the boundary with 34 Modena Road. The main three storey section would be set back slightly from the boundary, but would still visually dominate the adjacent residential property. This would be

exacerbated by the new building, which, whilst set further back than in the previous appeal scheme, would be significantly closer to the road than No 34.

11. The appeal proposal also includes two zinc bays at first and second floor level, which would extend beyond the eaves level and forward of the front elevation. These are not features that occur locally and would appear as unduly prominent in the street scene and out of keeping with the surrounding built form.
12. Part of the proposal is to reinstate the pitched roof over the main part of No 148, fronting Portland Road. The Council considers that this would compound the disruption to the transition from Portland Road down to Modena Road. I noted on my site visit that a number of the end of terrace properties along Portland Road do feature a lower ridge height than the rest of the terrace, but usually by setting the ridge down from its neighbours, rather than by including a flat roof section on the top of the roof. I do not consider that this element of the scheme would be harmful. However, neither do I consider that it would constitute a benefit of the proposal, as argued by the appellant, but rather be a neutral factor.
13. Overall, I consider that the proposed development would seriously disrupt the transition in built form from Portland Road to Modena Road, would appear unduly dominating when seen in conjunction with 34 Modena Road and would appear unduly prominent and intrusive in its setting. I accept that the existing buildings on the Modena Road frontage do not represent a coherent whole and that it would be possible to improve upon their appearance. However, I do not consider that the appeal scheme succeeds in doing so, and instead would cause significant harm to the street scene.
14. I conclude that the proposal would have a significantly adverse effect on the character and appearance of the area, contrary to Policy CP12 of the CP, which seeks, amongst other things, development that respects the diverse character of the city's neighbourhoods and raises the standard of design in the city.

Living conditions of future occupiers

15. Minimum dwelling and room sizes are contained in the "*Technical housing standards – nationally described space standard*" (NDSS) published by the Department for Communities and Local Government in March 2015.
16. The NDSS recommends that in order to provide one bedspace, a single bedroom should have a floor area of at least 7.5 square metres, whilst to provide two bedspaces, the bedroom should have a floor area of not less than 11.5 square metres. It goes on to set out the recommended minimum gross internal floor areas (GIA) for dwellings. These include a minimum size of 37 square metres gross internal floor area (GIA) for a one bedroom, one person, one storey dwelling with a shower room, and a minimum of 50 square metres GIA for a one bedroom, two person, dwelling on one storey.
17. The four flats that would be created by the appeal proposal are each on one storey and include a shower room rather than a bathroom. The two proposed bedrooms on the second floor would measure 11 square metres each according to the appellant, and 11.5 square metres according to the Council. The appellant's measurements would place these bedrooms as being for one person, as set out in the NDSS, by being below 11.5 square metres. Whichever measurement is correct, it is clear that the second floor flats would

be small, with a bedroom either slightly too small to be considered to be a double bedroom, or only just large enough. They would therefore be more likely to attract single people than couples, meaning that the overall GIA of the flats, at just over 37 square metres, would comply with the NDSS. On balance, I consider that the size of these two flats would not result in unacceptable living conditions for their occupiers.

18. The two bedrooms in the proposed first floor flats would be larger, at approximately 14 square metres, which the NDSS says in paragraph 10(d) is large enough to provide two bedspaces, being over the minimum of 11.5 square metres. The appellant states that each flat is intended for one person only, and that a single bed is clearly shown on the plans.
19. I have sympathy for the appellant's stated intention for the flats to only be occupied by one person each. However, the flats have been designed with a relatively large bedroom for the kitchen/dining/living space. It is not possible for the Council to control how many people live in each flat, and I agree with the Council that, by providing bedrooms of over 11.5 square metres, the flats may well attract two people, in the future if not immediately after construction. This means that, whatever the appellant's intention, these flats do constitute one bedroom, two person units. As the size of both the flats as a whole, at 48 square metres GIA, is below the minimum of 50 square metres GIA required by the NDSS, the proposal would not comply with the national standards.
20. I am conscious that, as the proposed flats are part of a new build, the first floor flats could easily be redesigned to make the bedrooms smaller than 11.5 square metres and the living space larger. The result would be units classed as for one person that would then comply with the NDSS. Nevertheless, I have to deal with the proposal before me, which does suggest that the first floor flats would be a little too small to provide acceptable living conditions for their likely future occupants.
21. The outlook from all four of the flats would be in one direction, facing over Modena Road. However, the two first floor flats would have three good sized windows each and the two second floor flats two each. I am aware that the previous Inspector considered the outlook from the proposed dwellings to be unacceptable. The current proposal differs from the previous one in that the proposed dwellings are now one bedroom flats rather than two bedroom houses, and in that the building is set a little further back from the road. I do not consider that the outlook from the dwellings now proposed would be unacceptable.
22. On this main issue, I conclude that the deficiencies in the size and layout of the first floor flats I identified above mean that the proposed flats would not, taken as a whole, provide acceptable living conditions for future occupiers of the proposed flats, contrary to saved Policy QD27 of the Brighton & Hove Local Plan 2005 (LP), which includes a requirement for development not to cause loss of amenity to proposed occupiers.

Other considerations

23. Both main parties agree that the Council cannot currently demonstrate a five year supply of deliverable housing sites, with the appropriate buffer. In his appeal statement, the appellant says that the shortfall of deliverable housing supply in the city is in the region of 1,200 units, giving the local authority a

four year supply. This figure is not disputed by the Council. In this situation, the provision of any additional housing is of considerable benefit. In the current appeal, four flats would be provided, above commercial premises. The provision of four flats would only make a small contribution towards the significant housing shortfall in the city. However, the provision of new dwellings on a brownfield site is in line with the preferred approach to housing provision set out in the National Planning Policy Framework (the Framework). I attach significant weight to this as a benefit of the appeal scheme.

24. The appeal proposal would also deliver improvements to the retained office space on site. I do not have evidence before me to show that the current arrangements are unsatisfactory, and any deficiencies do not appear to have prevented the existing units from being occupied. However, it is clear that the retained units would represent a higher standard of employment space than exists at present, and I attach some limited weight to this as a benefit.

Planning balance and conclusion

25. Policy CP1 of the CP looks to make provision for at least 13,200 new homes between 2010 and 2030. It says that this will be achieved by, amongst other things, focussing new development in accessible areas of the city, and promoting the efficient use of sites. This is an important policy within the CP, seeking as it does to satisfy what the CP itself describes as a “*key objective*”. The appeal proposal would provide development that is in accordance with this policy, and this must be afforded significant weight.
26. On the other hand, as I concluded above, the appeal proposal would have a significantly adverse effect on the character and appearance of the area, contrary to Policy CP12 of the CP. This policy is in line with the emphasis in the Framework on achieving well-designed places, and I give this conflict very significant weight.
27. I have also concluded that the proposal would be contrary to Policy CP3 of the CP, by reducing the provision of employment space. The Framework in paragraph 121 says that local planning authorities should take a positive approach to applications for alternative uses of land, including employment land in areas of housing demand, provided that this would not undermine key economic sectors. I do not have evidence before me as to whether the loss of office space would undermine a key economic sector, and this reduces the weight which I attach to this policy conflict to moderate.
28. Finally, I have concluded that the appeal proposal would not provide acceptable living conditions for future occupiers of the proposed flats, contrary to saved Policy QD27 of the LP. However, this is only on the basis of the first floor flats being marginally below the required size, which reduces the weight which I attach to this conflict to limited.
29. Overall, despite the support given to the proposal by Policy CP1, I consider that the conflict with the other policies that I have identified and have set out above means that the appeal proposal conflicts with the development plan as a whole.
30. It is common ground between the parties that the authority cannot demonstrate a five year supply of land and that, as a result, the ‘tilted balance’ set out in paragraph 11 d) ii of the Framework is engaged.

31. I attach significant weight to the provision of four additional housing units, and some limited weight to the improvements to the retained office space. However, I consider that the significantly adverse effect on the character and appearance of the area should be afforded very significant weight. In my opinion, this degree of harm on its own significantly and demonstrably outweighs the benefits associated with the appeal proposal, when assessed against the policies of the Framework as a whole.
32. I have concluded that the proposal would conflict with the development plan as a whole, and that the adverse effects of allowing the appeal to proceed would significantly and demonstrably outweigh the benefits associated with the appeal proposal. Section 38(6) of the Planning and Compulsory Purchase Act (2004) says that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In the circumstances of this appeal, the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.
33. For the reasons set out above, I conclude that the appeal should be dismissed.

Michael J Muston

INSPECTOR