
Appeal Decision

Site Visit made on 22 June 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2021

Appeal Ref: APP/B1550/W/20/3262012

6 Aldermans Hill, HOCKLEY, SS5 4RW

- 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 Chandra Prajapati against the decision of Rochford District Council.
 - The application Ref 20/00229/COU, dated 5 March 2020, was refused by notice dated 29 April 2020.
 - The development proposed is Change of use: incorporate the front shop floor space into residential use.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from shop to residential use (incorporating existing shop floorspace into residential floorspace for the existing dwelling at the site) at 6 Aldermans Hill, HOCKLEY, SS5 4RW in accordance with the terms of the application, Ref 20/00229/COU, dated 5 March 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: 19/349 111 Rev B

Preliminary Matters

2. The National Planning Policy Framework was revised on 20 July 2021 and the Council and appellant have had an opportunity to comment on the implications of this.
3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment)(England) Regulations 2020 came into force and has made significant amendments to the previous system of use classes. Under the new system, Class A has been revoked and a new Class E which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes within Class E.

Main Issues

4. The main issues are:
 - whether the proposed residential use would be appropriate; and

- the effect of the proposed change of use on parking conditions, and consequently highway safety.

Reasons

5. Policy RTC3 of the Rochford District Council Core Strategy states that the Council will seek to ensure that retail premises in neighbourhood shopping areas outside town centres are retained. The change of use of the ground floor of existing retail premises to non-retail use outside of town centres will be permitted subject to a range of conditions, including that all reasonable attempts have been made to sell or let the premises for retail use, but without success.
6. DM36 of the Rochford District Council – Local Development Framework Development Management Plan (DMP) states that retail premises in villages and neighbourhood shopping areas outside town centres will be retained. It outlines a number of criteria where changes of use to non-retail will be permitted, including where the loss of the retail unit is justified. This should be because the unit is vacant or is not financially viable. In both circumstances it is required that all reasonable attempts are made to sell or let the premises for retail use. In addition, proposals should not result in the removal of any independent means of accessing upper floors or otherwise prevent an effective use being made of the upper floor.
7. The appeal site is located within a predominately residential area, with the central shopping area of Hockley being located a short distance from the site. The site comprises a ground floor retail unit with living accommodation above, at the time of my visit the shop was closed and the evidence before me indicates that it has been since April 2020.
8. The Council has indicated that the site is within a neighbourhood shopping area although this point is not agreed by the appellant. In addition, I have not been provided with any definition or local plan allocation which defines these areas. Based on an assessment of the site which appears very much part of a residential street, I am unable to conclude that the appeal site comprises a neighbourhood shopping area, albeit I recognise any retail use of the site could serve nearby residents.
9. Turning to the requirements to market the property for alternative uses, the appellant has indicated that it is not possible to undertake marketing for the ground floor retail unit as it is linked directly to the upper floor accommodation and these can not be used independently. However, from the submitted floor plans it appears that there is access available from the rear of the site through the kitchen, living room to the stairs to the first floor. There is a separate access to the front which serves the shop floor areas and whilst there is an opening from the shop floor into the living accommodation, I have not been provided with any evidence that this is necessary for the functioning of the ground floor retail unit.
10. Whilst evidence has been submitted to indicate that the site is not financially viable, this does not negate the policy requirements for alternative uses to be considered prior to the consideration of a residential use. Therefore, the proposal fails to adequately demonstrate that all reasonable attempts have been made to sell or let the premises for retail use and is contrary to policy DM36 of the DMP.

11. In conclusion the proposed residential use would be inappropriate as a result of its conflict with policy DM36 of the DMP which only permits the changes of use to non-retail uses where the loss of the retail unit is justified.

Highways

12. The appeal site is located within an area of restricted parking and does not benefit from off road parking, although it is possible for a car to park within the frontage of the site, there is no formal vehicle crossover to enable access to this space.
13. It has not been demonstrated within the evidence before me that the proposed use would lead to an increase demand for parking than that which previously existed, taking into account that the former A1 retail use would also be likely to require servicing and deliveries. In addition, the proposal does not result in an increase in bedrooms or the overall number of dwellings on the site and therefore there is nothing to suggest that there would be increased occupation resulting in further demand for parking spaces.
14. Therefore, I am satisfied that in the circumstances of this appeal, the effect of the proposed change of use would not be detrimental to parking conditions, and consequently highway safety, in accordance with policy DM30 of the DMP which requires development to comply with adopted parking standards, although this may be relaxed in residential areas near town centres.

Planning Balance

15. I must have regard to other material considerations and I have also considered the linked appeal for prior approval APP/B1550/W/20/3268214. That appeal was allowed and approval granted under the provisions of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development (England) Order 2015 as amended for the ground floor conversion to residential storage and lounge. Therefore, under the terms of that approval the existing retail unit can be used for residential purposes and to this I have attached considerable weight.
16. The proposal would not generate a materially different outcome in terms of the loss of the retail unit than the development permitted. Therefore, I find no demonstrable harm arising from the conflict identified with policy DM36 as the loss of the retail unit has been justified as a result of the prior approval.

Conclusion

17. For the reasons given above, the proposal would conflict with the development plan, however there are other considerations, including the prior approval for the change of use to residential use, that outweigh this conflict.
18. Therefore, I conclude that the appeal should be allowed.

G Pannell

INSPECTOR