



Appeal Decision

Site Visit made on 10 August 2021

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021.

Appeal Ref: APP/Z0116/W/20/3271438

The Freebutt, 1 Phoenix Place, Brighton BN2 9ND

- 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 One Phoenix Place against the decision of Brighton and Hove City Council.
 - The application Ref BH2019/00161, dated 23 December 2018, was refused by notice dated 15 June 2020.
 - The development proposed is "Change of use from Public House (A4) to provide residential accommodation comprising 3no purpose built wheelchair accessible units on the ground floor (C3) and 3no Houses of Multiple Occupation (HMOs) with 23 bedspaces on the first, second and third floors (Sui Generis). Remodelling and alterations incorporating erection of additional storey and roof alterations including raising of ridge height and formation of mansard roof with revised fenestration and associated works".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development changed in the course of the application. I have therefore referred to the amended description which was used in the Council's decision notice and which the appellant referred to in their appeal form, confirming it accurately describes the proposal they seek planning permission for.
3. Amended floor plans were submitted as part of the appeal in respect of the proposed first, second and third floors¹. These do not show any changes to the proposed layouts, but they have been annotated to show possible furniture arrangements within the communal spaces on each floor, while double beds shown to one room on each of the first and second floors have been changed to single beds. These are minor changes which all parties have had an opportunity to comment on, and the Council have referred to them in their appeal statement. No parties would be prejudiced by me proceeding to assess the appeal with reference to these amended plans.

Main Issues

4. The main issues are: (i) whether the proposal would result in the unacceptable loss of a community facility; (ii) the effect of the proposal on the character and appearance of the area with specific regard to: a) the Valley Gardens Conservation Area (CA), and b) the setting of listed buildings; and (iii) whether

¹ Plan references: TA119/13F and TA119/14C

the proposal would provide acceptable living conditions for future occupiers, with particular regard to the proposed Houses in Multiple Occupation (HMOs).

Reasons

Community Facility

5. The appeal site comprises a public house which has been vacant since 2010. Policy HO20 of the Council's Local Plan² states that planning permission will not be granted for development that involves the loss of community facilities. A list is provided of some uses which are taken to constitute such facilities, but this does not include public houses. There are four exceptions to the policy: (a) where a community use is incorporated or replaced within the development; (b) where the community use is relocated, improving its accessibility; (c) where existing nearby facilities are improved to accommodate the loss; or (d) where the site is not needed for the existing use or other types of community use. Where an exception applies, priority is given to residential and mixed use schemes which may provide live-work and/or starter business units to meet local needs.
6. I have not been directed to any part of the Council's Local Plan which may define 'community facilities' and I do not take the list provided within the policy to be exhaustive. I am aware that the Framework³ refers to public houses as an example of shared spaces or community facilities. Whether the appeal site constitutes a community facility in the context of Policy HO20 relies, in my view, on whether it provides for people's day-to-day needs or otherwise serves the community in a valued manner. The Council's evidence confirms the public house closed following noise complaints, but it is argued that it could reopen and be supported by the local community with the right management measures and soundproofing. The appellant has provided a breakdown of what they consider to be the necessary costs to reopen the public house ('the Refurbishment Costs Plan'⁴), but no detailed assessment has been undertaken to demonstrate its reopening as a public house would not be viable in the long-term.
7. Although the public house closed over ten years ago, it provided a service of benefit to the local community in terms of space for social interaction and leisure opportunities which would have been of value to some people, which a re-opened public house could offer again. I have not been presented with sufficient evidence to convince me the public house, although vacant for a substantial period of time, was not operating, and could not operate in the future, as a viable public house. Indeed, I note the appellant purchased the property in 2015 some five years after it closed. The evidence does not suggest that any great lengths have been gone to in reopening the public house, other than producing the Refurbishment Costs Plan. I am therefore of the opinion that the appeal site does constitute a community facility as referred to by Policy HO20 and it has not ceased to be a community facility due to its closure.
8. The appellant claims the proposal meets exceptions (c) and (d) to the policy. In respect of exception (c), no improvements to existing community facilities

² Brighton & Hove Local Plan 2005

³ The National Planning Policy Framework (2021)

⁴ Morgan Carr Cost Plan: Refurbishment (7 May 2019)

nearby are proposed; instead, the appellant suggests that other local public houses and music venues would have been invested in and improved since the appeal building's closure, and that it would be unreasonable to expect the proposal to include investment in other private enterprises. I do not read the policy exception to require investment in other facilities of the exact same nature. There may be other community facilities nearby that could be improved in a variety of ways to accommodate the loss of the social/leisure space proposed, for example. It has not therefore been demonstrated that the proposal would meet exception (c).

9. The appellant claims that a public house is no longer needed at the appeal site because eighteen public houses exist within 500m of the appeal site and there was a lack of interest from potential purchasers following their marketing exercise⁵. A brief description of the marketing exercise has been provided, which does not explain any detailed research carried out prior to its advertisement of the freehold for sale, such as how the market value was ascertained, how and where the property would be advertised, the dates when the marketing exercise was undertaken, or why no consideration was given to renting the property. No detailed report explaining the processes followed or findings made during the marketing exercise have been provided by the two agencies involved, and as such there is no evidence to demonstrate a sufficiently robust marketing exercise has been undertaken.
10. I note the Refurbishment Costs Plan and claims that these works would require the property to be leased at a rent significantly higher than other public houses in the area, but this is dated May 2019, whereas the descriptions of the marketing exercise suggest that process commenced in 2015, shortly after the appellant purchased the appeal site. No refurbishment costs for any alternative community facility use have been provided. Important details concerning the marketing exercise and the Refurbishment Costs Plan are therefore absent.
11. The appellant states that the policy does not specify any particular marketing campaigns need to be undertaken. However, the implications of the policy are clear: to ensure compliance with exception criterion (d) it must be demonstrated that the site is not needed for any community use. No evidence has been submitted to show this is the case and I am not persuaded to conclude that the appeal site would not be needed as a community facility on the basis of other public houses being present nearby or the lack of interest from potential purchasers generated by the marketing exercise undertaken, based on the information presented.
12. The proposal would therefore fail to accord with Policy HO20 of the Local Plan, as it would constitute the unacceptable loss of a community facility, no existing nearby facilities would be improved to accommodate the loss, and it has not been demonstrated that the site is not needed for community purposes.

The Valley Gardens Conservation Area

13. The evidence suggests the appeal building was erected in the early-nineteenth century, pre-dating the former Tamplin/Phoenix Brewery which occupied much of the land surrounding the appeal site until its redevelopment in the 1990s. Located on a side street, the original part of the appeal building lies within the CA, with its west elevation facing towards the Grade II listed Former Phoenix

⁵ Carr & Priddle and Brighton Accommodation Agency (undated)

Brewery Office and its north elevation adjoining a gate pier of some age, marking the entrance point to the former brewery. Further to the north, and also within the CA, the rear façades of the grade II listed 1 – 3, 4 – 6 and 7 Richmond Terrace face onto Malthouse Lane, which adjoins Phoenix Place opposite the appeal site. The appeal building was substantially extended to the east at some point in the late-twentieth century; that part of the building lies outside of the CA, as do the neighbouring 1990s residential properties to the north and east on Tamplin Terrace and Phoenix Rise.

14. The CA Study⁶ sets out four sub-areas of the CA, with the appeal site falling within 'The Level/Park Crescent/Hanover' area, which is described as centring on The Level with terraces and side streets located either side. The area east of The Level was developed in the early 1800s, and examples of that period are the listed buildings at 1 – 3, 4 – 6 and 7 Richmond Terrace, which display a rich variety of detail. The CA Study refers to much of Waterloo Place being demolished to make way for the 1960s development of Wellesley House which detracts from the CA as a whole. It also describes the mix of uses contributing to the character of this part of the CA which relies mainly on the openness of The Level and the frontages of the grand terraces that surround it, with the narrow streets behind. In summary, the CA Study states: "Its status as a conservation area lies in the historic interest behind its development as well as the architectural interest of its buildings".
15. Visually, the appeal building appears to be in a poor state of repair, internally and externally. Some of its historic external features can still be appreciated on its west and north elevations, including original window and door openings, low hipped roof and chimney stacks, canted bay windows, cornice, string course, eaves brackets, former brewery gate pier, and one remaining advertising plaque. Modern extensions to the east and south elevations are poorly designed and have a harmful effect on the character and appearance of the wider area but lying outside of and facing away from the CA, their effect on views within the CA is limited.
16. The remaining historic form and features of the original part of the building make a small, but positive contribution to the character and appearance of the CA. This is on account of their evidential value referring to the building's historic use and its association with its surroundings, which included the former brewery site, and the inherent aesthetic value of its retained original architectural form, features and appearance. The appeal building is in clear need of maintenance and repair, but this does not detract from those appreciable qualities.
17. When seen in restricted views down Phoenix Place from Richmond Terrace, the appeal building's scale is typical of what the CA Study refers to as the narrower side streets off the central spine of the CA, behind grand frontages. Heavily altered cobblestone paving remains along a short section of Phoenix Place leading to the appeal building from Richmond Terrace. However, the appeal building's backdrop in those views is made up of the 1990s three and four storey terraces of Phoenix Rise, which are set at a higher level, and the foreground is dominated by the 1960s Wellesley House. In this context, the appeal building is notable for its historic form and appearance as a modest early-nineteenth century public house, albeit poorly maintained and

⁶ Valley Gardens Conservation Area Study and Enhancement Plan (1995)

unsympathetically extended to the rear. It is of moderate architectural and historic interest on account of original elements of the building remaining appreciable, and it makes a low-level positive contribution to the significance of the CA as an example of the historic form, style and use of buildings on side streets behind the grand frontages to Richmond Terrace/Waterloo Place.

18. The proposed development would include the substantial remodelling of most of the building and its upward extension by two floors. The original window and door openings, bay windows and cornice would be retained on the west elevation, and one door opening and the former brewery gate pier would be retained on the north elevation. The unsympathetic twentieth century additions to the building would be replaced, resulting in a building of substantially larger scale, but on the whole better composed and detailed than the existing.
19. The Council have described the proposal as resembling a grand late-Victorian villa, which would be more typical of other conservation areas, rather than this location. The appellant's Heritage Statement⁷ refers to the proposal as taking its design cue from the existing appeal building to reuse parts for the purposes of effective conservation. I also note the contents of the appellant's earlier Context and Design Review⁸, which explains that although some elements of the proposal would include recognisable architectural components often associated with Victorian villas, some of these already exist within the existing appeal building, and despite the increases in scale and mass the proposal would not display other characteristics classically associated with Victorian villas seen in other conservation areas.
20. In my view, the proposal would somewhat resemble a pastiche interpretation of a Victorian villa on account of its proposed mass, finish, fenestration, rustication, bracketed cornice and string courses; however, this would be in response to the existing style of the original parts of the building, on a much larger scale. I read the Council's comments in this regard as highlighting the fact that the proposal would not resemble the architecture of nearby buildings and would be of a scale too grand for this backstreet part of the CA, where buildings should be more restrained in comparison to those fronting Richmond Terrace and Waterloo Place.
21. The proposal would be of a similar scale to the Former Phoenix Brewery Office, and this would be seen in views from Richmond Terrace in the context of its grand terraces, but also Wellesley House and the terraces of Phoenix Rise. The existing historic form of the early-nineteenth century public house would be lost and the retained architectural features would be largely consumed by the proposal's efforts to replicate a similar style on a larger scale. This loss would cause low-level harm to the character and appearance of the CA.
22. There would be improvements to the character and appearance of the building in views from Albion Street and Tamplin Terrace, outside of the CA, and improvements to the condition of the building from all angles. The style of the resulting building would appear as a high quality imitation of an older building, but it would leave little resemblance to the existing historic form of the appeal building.

⁷ The Heritage Advisory, July 2020

⁸ Le Lay Architects, May 2019

23. It has been claimed that the addition of two floors to the appeal building would be necessary to allow the building to be viably reused, but insufficient evidence has been presented to demonstrate this. The Refurbishment Costs Plan provides a detailed breakdown of anticipated refurbishment costs, but there is no analysis to show these are the minimum works necessary to bring the existing building back into use, and no explanation as to why the building has not been appropriately maintained since its closure, or how these costs were factored into the appellant's purchase of the property sometime after its closure. I have not been presented with sufficient evidence to convince me it would be unviable for the appeal building to be appropriately maintained and repaired without extending the building upwards by two floors in this manner.
24. The proposal would cause a low level of harm to the character and appearance of the CA due to the loss of the appeal building's historic form, which is an example of what would have been typical of the smaller side streets off Richmond Terrace within the CA. It would therefore fail to preserve or enhance the character or appearance of the CA and would cause 'less than substantial harm' to the significance of the CA, as referred to by the Framework. I attach considerable importance to this harm, despite it being low-level.
25. Public benefits associated with the proposal would include improvements to the condition of the building, the replacement of the building's unsympathetic modern elements, the reuse of a building which has been vacant for a substantial period of time, and the provision of sixteen dwellings⁹, including three wheelchair accessible units. I have not been presented with information to convince me that these or similar benefits could not be achieved by alternative less harmful measures, that any low-level of harm is necessary to allow the building to be viably reused, or that these benefits otherwise outweigh the less than substantial harm identified. It has also not been demonstrated that the proposal is necessary to secure the appeal building's optimum viable use. The public benefits of the appeal scheme would not therefore outweigh the harm that I have found.
26. The proposal would therefore fail to accord with Policies QD14 and HE6 of the Council's Local Plan and Policies CP12 and CP15 of the Council's City Plan¹⁰. These require, amongst other things, proposals to preserve or enhance the character or appearance of conservation areas with extensions being well designed in relation to the property being extended to reflect the scale, character and building forms of the area, conserving the City's built heritage.

Setting of Listed Buildings

27. The setting of the Grade II listed Former Phoenix Brewery Office is constrained to the rear of Wellesley House. It can be seen in limited views down Phoenix Place from Richmond Terrace as a modest historic building behind 1 – 3 Richmond Terrace, but it is appreciated more easily in its immediate surroundings along Phoenix Place, Malthouse Lane, and the entrance to Tamplin Terrace. Its setting is therefore quite varied in terms of the size, age, design and quality of other buildings that provide the backdrop to how the listed building is experienced.

⁹ Applying a ratio of 1.8 HMO bedroom to one dwelling

¹⁰ Brighton & Hove City Plan Part One (2016)

28. The settings of 1 – 3, 4 – 6 and 7 Richmond Terrace are much wider, primarily on account of their more substantial size, but also because of their front elevations facing onto The Level and the relative openness of Malthouse Lane in comparison to Phoenix Place. Their rear elevations are plain and simple, as would be expected, but their rear fenestration arrangements set them out as historic buildings of prominence overlooking the 1990s two storey terraces of Tamplin Terrace, which restrict the extent of their settings to the rear.
29. The appeal site therefore lies within the settings of all these listed buildings, but it is very much on the periphery of the settings of 4 – 6 and 7 Richmond Terrace, which are set back from Malthouse Lane, behind the rear elevation of 1 – 3 Richmond Terrace. Its impact on the setting of 1 – 3 Richmond Terrace is also limited due to its distance from that listed building in the context of surrounding residential properties on Tamplin Terrace. Those listed buildings on Richmond Terrace form a historic grouping, being of similar ages and built by Amon Wilds, but the appeal building does not form part of that grouping.
30. Sitting alongside and facing the Former Phoenix Brewery Office, the appeal building forms an important feature within the setting of that listed building, but there is no architectural connection between the two. The appeal building pre-dates the Former Phoenix Brewery Office, which was constructed at a time when the appeal building was under the ownership of the brewery and apparently acting as a brewery tap, adjoining the entrance to the former brewery. There is an historic connection between the buildings, and the remaining original elements of the appeal building refer to its role as a public house which came to be associated with the Former Phoenix Brewery Office through its close physical and operational relationship with the former brewery.
31. The retention of some original features of the appeal building on its west elevation and the former brewery gate pier would ensure that the historic relationship with the Former Phoenix Brewery Office remains appreciable. Although the appeal building would no longer appear as a modest early-nineteenth century public house, and it would be difficult to read as a converted public house, the status of the Former Phoenix Brewery Office next to the entrance of the former brewery would be unaffected.
32. The proposed increase in scale would create a building of similar mass as the Former Phoenix Brewery Office, but experienced within its mixed setting, which includes the domineering modern developments of Wellesley House and Phoenix Rise and the grander terraces on Richmond Terrace, the proposal would not restrict or otherwise adversely affect the appreciation of its special architectural and historic interest. The same can be said for the settings of the listed buildings on Richmond Terrace, which would be affected to a lesser degree due to the lack of historic association, and their distance of separation amongst similarly varied scales and styles of buildings that occupy their settings to the rear.
33. The loss of the appeal building's historic form, the change in its scale and the difficulty in reading its original features would not cause any harm to the mixed settings of the listed buildings at 1 -3, 4 – 6 and 7 Richmond Terrace or the Former Phoenix Brewery Office. The proposal would therefore comply with Policy HE3 of the Council's Local Plan, which seeks to prevent proposals from having an adverse impact upon the settings of listed buildings.

Living Conditions

34. The Council's objection to the proposal in respect of the third main issue relates to the amount of communal space that would serve each of the three proposed HMOs and its layout.
35. The amended plans show it would be possible to fit sufficient facilities for up to eight occupiers on the first and second floors and up to seven occupiers on the third floor. Space would be limited, especially at third floor level, suggesting that these facilities would not provide a comfortable arrangement for future occupiers, who are likely to have occasional visitors. The tightly arranged layouts of each floor and lack of outside space suggest to me that the communal kitchen/dining/living areas would be particularly important to ensure a satisfactory standard of living conditions for future residents, notwithstanding the appeal site's proximity to public open space. As up to eight people would reside on the first and second floors and up to seven people on the third floor, I consider the indicative positions of kitchen, dining and lounge facilities insufficient to demonstrate these numbers of people would have access to an acceptable standard of communal space, to the detriment of their living conditions.
36. The appellant has referred to HMO licensing standards, suggesting that the proposal far exceeds those minimal requirements in respect of kitchen/dining areas. I have not been presented with a copy of those standards, but reference has been made to them not specifying a minimum amount of living area. Those standards would not therefore, in my view, be sufficient to ensure that newly designed HMO accommodation of the size proposed in this case would provide acceptable living conditions for future occupiers.
37. The proposed HMOs would not therefore provide acceptable living conditions for future occupiers because the communal kitchen/dining/living areas would be insufficient in size, considering their layouts and the number of people they would serve. This would conflict with Policy QD27 of the Council's Local Plan which seeks to avoid development which is liable to being detrimental to human health.

Other Matters

38. The Council is unable to demonstrate the supply of housing required by the Framework. Where this is the case, Paragraph 11 of the Framework confirms that the development plan policies which are most important for determining the application will be out of date. Planning permission should then be granted unless, amongst other things, the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the proposed development. As set out in the second main issue, I have identified less than substantial harm that would be caused to the significance of the CA, which would not be outweighed by public benefits. The protection of heritage assets from harm is a policy of the Framework for the purposes of Paragraph 11. This would provide a clear reason for refusing the proposal. The presumption in favour of sustainable development referred to at Paragraph 11 of the Framework does not therefore apply in this instance.

39. The appellant has claimed Policy HO20 is out of date due to its inconsistency with Draft Policy DM10 of the Council's emerging City Plan Part II and Paragraph 93 of the Framework. Policy HO20 is not inconsistent with Paragraph 93, despite the policy not specifying that community facilities should be 'valued'. I have been provided with a full copy of Draft Policy DM10, which the appellant advises should only be afforded limited weight. Draft Policy DM10 seeks to protect the redevelopment and/or change of use of public houses, other than where one of two exceptions arise. It would apply different exception criteria compared to Policy HO20, but it would continue to encourage the re-use of unviable or unneeded public houses as alternative community facilities and remains unadopted. I am not therefore minded to apply any significantly reduced weight to Policy HO20 on the basis of these arguments.
40. The appellant has also claimed amendments made to the Use Classes Order¹¹ (UCO) in 2020 suggest Policy HO20 is out of date with regard to its emphasis on requiring properties to be marketed to other community uses. It is claimed that those changes to the UCO may make it easier for community uses to occupy properties previously occupied by Class A1, A2, A3 or B1 uses. No evidence has been submitted to demonstrate this is likely to be the case or that the appeal building is not needed for any community use. Community uses do not fall within any specific use class, and although a range of community uses formerly falling within the Class D1 use class may now fall within the Class E, F.1 or F.2 use classes, this does not suggest to me that any less weight should be afforded to Policy HO20 in the absence of any evidence showing that the aims of the policy are no longer relevant.
41. The appellant has referred to 'additional viability information' presented to the Council by letter dated 17 April 2020, which is claimed to demonstrate that it is not possible to viably convert the appeal building without extending it. The information presented in this regard is limited and it does not convince me that the proposed development would be the only option to see the appeal building brought back into use with its appearance and condition improved.

Conclusion

42. The proposal would result in the unacceptable loss of a community facility, fail to preserve or enhance the character or appearance of the CA and would provide unacceptable living conditions for future occupiers of the proposed HMOs. It would not harm the setting of any listed buildings, but this lack of harm could not outweigh any of the harm identified. There are no material considerations, including the approach of the Framework, that indicate my decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

L Douglas

INSPECTOR

¹¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)