

Appeal Decision

Site visit made on 23 February 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2022

Appeal Ref: APP/Q1445/W/21/3281111

68A St Georges Road, Brighton BN2 1EF

- 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 J Blake, Sussex Property Investments Ltd, against the decision of Brighton and Hove City Council.
 - The application, Ref. BH2021/01376, dated 15 April 2021, was refused by notice dated 9 June 2021.
 - The development proposed is a change of use of an existing office to a two bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of an existing office to a two bedroom dwelling at 68A St Georges Road, Brighton in accordance with the terms of the application, Ref. BH2021/01376, dated 15 April 2021, subject to the conditions in the attached Schedule.

Main Issue

2. The main issue is one of living conditions: firstly, the adequacy of outlook, light, privacy and outdoor amenity space for future occupiers of the building and secondly the effect of the proposed change of use in terms of privacy for the residential occupiers of Nos. 11 and 12 Eastern Street in close proximity to the west and approved in 2013.

Reasons

3. The background to the application, and in particular the planning history of the appeal site, informs my consideration of the current proposal. In this regard the officer's report advises that a part retrospective 2016 application for the demolition of an existing office building and the erection of three bedroom dwelling was refused permission and subsequently dismissed at appeal in December of that year.
 4. The Inspector's reasons for this decision were the harm that would be caused to the living conditions for occupiers of Nos. 11 & 12 Eastern Street as regards privacy and noise & disturbance, and the inadequate living conditions for the future occupiers of the dwelling in respect of privacy, outlook and daylight.
 5. A subsequent part retrospective application in 2017 for a similar building with a re-alignment of the previously proposed ground floor and first floor elevations and accommodating two storeys of office space was granted permission. This
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was firstly because of the probability that with an office use, any adverse impacts on the aforementioned Nos. 11 & 12 would be confined to weekday office hours. Secondly, the non-residential use of the building would have a lower requirement for working conditions in respect of privacy, outlook and daylight.

6. The permission included a condition restricting permitted development rights for a change of use to residential and as I understand the position, it is this building and its 80sqm or thereabouts of office space on two floors that is the subject of this appeal against a refusal for a change of use to a dwelling.
7. For the appellant it is explained that the existing ground floor open plan office space would be subdivided to provide two bedrooms and a bathroom, with the main living space on the first floor and comprising an open plan kitchen / living and dining area. The Council's view is that despite this arrangement there would be the harm caused as identified in the Notice of Refusal.
8. However, leaving considerations of living conditions for future occupiers of the building and existing & future occupiers of Nos. 11 & 12 Eastern Street temporarily aside, I note that the application relates to an empty building and that the Council's marketing requirements for occupation as an office use have been met but with no takers. In addition, the Council is unable to demonstrate a five year housing land supply – the exact figures given by the Council and the appellant differ, but it is agreed that the shortfall is substantial and that an additional dwelling in this case would make a positive albeit incremental contribution.
9. In my view with its current lawful use as an office, the combination of the very real prospect of a lengthy continued vacancy of the building and the Council's under-performance in respect of its housing targets (albeit understandable given the constraints on suitable land in the city) carry significant weight in the planning balance in this appeal. It is in this current context rather than the circumstances pertaining at the time of the 2016 appeal, that an assessment of the appropriateness of the building for residential use has to be made.
10. Government policy in paragraph 11d) ii of the National Planning Policy Framework 2021 ('the Framework') means that there is a 'tilted balance' in favour of permission for housing being granted where there is a shortfall in housing supply. The exception is where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
11. Returning to the main issue of living conditions for existing and future occupiers, whilst the 2016 appeal decision was apposite six years ago, in the current circumstances there are a number of persuasive arguments pertinent to the current proposal to counter the analysis and conclusions in the officer's report on the appeal application. Firstly, the floor area of the proposed dwelling would be consistent with the Nationally Described Space Standard for a two bedroom three person dwelling and thereby on course for adoption as part of emerging Policy DM1 in the Brighton and Hove City Plan Part Two.
12. The use of the upper floor for the living and dining areas with its higher aspect would result in an improved outlook through the upper part of the sash windows over the stepped neighbouring elevation of Nos. 11 & 12 Eastern Street. The

higher ceiling height and the skylights, neither of which applied to the proposed ground floor living area in 2016, would facilitate a more than adequate perception of space and light to secure a pleasing residential ambience. The appellant's statement also points out the beneficial effect of the different ground levels in terms of limiting any overlooking between the proposed dwelling and its neighbours and that the use of high level windows for the ground floor bedrooms would be even more significant in safeguarding privacy in both buildings.

13. The amount of daylight for the proposed dwelling is a matter of technical dispute between the parties, but from my visit to the premises and to Eastern Street to assess the close relationship between existing buildings, I am satisfied that the proposed change of use would not result in aspect and light that provides living conditions for future occupiers and existing neighbours materially different to those already typical in this high density part of the city.
14. Nor does this heavily constrained location generate any reasonable expectation by residents of private amenity space and I therefore do not regard the absence of the external terrace as being anything other than an example of the difficulties (cited in the supporting text to the emerging Policy DM1 in the Brighton and Hove City Plan Part Two) of the provision of external amenity space in the conversion of buildings to residential use. In short, the Council recognises that a degree of pragmatism is needed in such cases, with prospective occupiers being able to make their own decision as to the need for this amenity.
15. Taking all these factors together I do not consider that any adverse impacts of granting permission for the proposed change of use to a dwelling would significantly and demonstrably outweigh the benefit of this addition to the housing supply for Brighton at a time of substantial shortfall in accommodation.

Other Matters

16. The appeal site adjoins 8 Belgrave Place, a Grade II listed building, and lies within the East Cliff Conservation Area. These are designated heritage assets but I have seen no evidence to indicate that the proposed change of use and minor external alterations would cause them harm. I am therefore satisfied that the significance of the assets would remain unaltered if the appeal is allowed.
17. I have carefully considered the objections of nearby residents, which include support for the Council's view that the change of use would be un-neighbourly. However, with the proposed alterations to the building including the alterations to the fenestration of the facing elevation, the absence of any outdoor amenity space and the only access directly from the St Georges Road frontage, I foresee little or no interaction between the activity and movement of occupiers of the proposed dwelling and existing residents. Essentially there would be no intrinsic harm caused to the living conditions of neighbours.

Conclusion and Conditions

18. For the above reasons I conclude that the living conditions for future occupiers of the building and existing residents as detailed in the main issue in paragraph 2 above would not be unacceptably harmed by the proposed change of use. Accordingly, there would be no material conflict with emerging Policy DM20 of

the Brighton and Hove City Plan Part Two; Policies QD14, QD27 & SU10 of the Brighton & Hove Local Plan (Retained Policies March 2016), and Section 12: 'Achieving Well-Designed Places' (in particular paragraph 130f) of the Framework. As a consequence, the tilted balance in paragraph 11 of the Framework must also apply in support the proposal as this is a development that is sustainable in terms of both its location and as a viable and appropriate use of an existing unused resource.

19. I shall therefore allow the appeal. The Council has suggested a number of standard conditions, but I do not consider that all of these are suitable or relevant to this particular proposal. Other conditions in the list, some of which have also been suggested on behalf of the appellant, are however reasonable and necessary.
20. A condition requiring the development to be carried out in accordance with the approved plans is needed for the avoidance of doubt and is in the interests of proper planning. A condition in respect of matching materials in the making good of alterations to the building's main elevation will safeguard visual amenity. A condition in respect of the obscure glazing and fixing shut of the lower parts of the proposed first floor windows will prevent overlooking and safeguard the privacy of the occupiers of 11 & 12 Eastern Terrace. Finally, conditions to secure water and energy efficiency and the storage and recycling of refuse will secure a development that meets the City's environmental standards as set out in its adopted and emerging policies.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this Decision;
- 2) The development shall be carried out in accordance with the following approved plans and the annotations thereon: Drawing No. Series 3010: Plan Nos. 101; 102; 103; 104; 105; 106; 107; 108;
- 3) The alterations to the external surfaces of the building shall match those of the existing wall in both materials and colour;
- 4) The residential unit hereby approved shall not be occupied until energy efficiency measures for the proposed dwelling have been installed in accordance with details first submitted to and approved in writing by the Local Planning Authority;
- 5) The residential unit hereby approved shall not be occupied until it has been demonstrated that the building provides as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum water consumption;
- 6) The residential unit hereby approved shall not be occupied until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out and provided in full in accordance with the approved details prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
- 7) The lower sashes of all the first floor windows shall be obscure glazed and fixed shut and thereby permanently retained in that form.