



Appeal Decision

Site visit made on 23 March 2023

by **D Cramond** BSc MRTPI

an Inspector appointed by the Secretary

Decision date: 19th April 2023

Appeal Ref: APP/Q1445/W/22/3305446 242 Portland Road, Hove, BN3 5QT

- 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 Adam Spear against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/00654, dated 23 February 2022, was refused by notice dated 14 April 2022.
 - The development proposed is the part change of use & conversion of existing rear ground floor retail space (E) to residential (C3) and erection of single storey rear extension to create 1no one bedroom flat.
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Decision

1. The appeal is allowed and planning permission is granted for the part change of use & conversion of existing rear ground floor retail space (E) to residential (C3) and erection of single storey rear extension to create 1no one bedroom flat at 242 Portland Road, Hove, BN3 5QT in accordance with the terms of the application, Ref BH2022/00654, dated 23 February 2022, subject to the conditions on the attached schedule.

Preliminary Matters

2. I use the Council's description of development which is more precise than the application form; I note the Appellant also uses this on the appeal form.
3. The City Plan Part Two was an emerging document at the time of the application decision notice. Subsequently, it was adopted by the Council in October 2022 and I refer to it in the light of this.

Main Issues

4. The main issues are the effect of the proposal on the:
 - future operation of nearby premises; and
 - living conditions for future residents.

Reasons

5. The appeal premises are a two-storey terraced building on the southern side of Portland Road. The ground floor of the building is in use as a salon, with residential flats above, accessed from Portland Road. There is an existing single-storey extension to the rear. The locality is a vibrant one with a range of commercial uses at ground floor on the stretch facing Portland Road and at times making use of rear outside or part covered space. At present there is a
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restaurant with an outdoor seating area alongside which opens in the evenings and a car park seemingly used for wholesale vehicle storage. Immediately to the south, beyond the commercial rears is a well-established good quality residential area. The proposal is as described above and would have a flat roof and would project out onto part of the presently open unused area at the rear of the host property.

Operation of nearby premises

6. The Council is concerned that the proposed building would significantly adversely impact existing business uses adjoining the site in that this 'agent of change', has not demonstrated that acceptable mitigation can be provided to prevent unreasonable restrictions being placed on these existing businesses. The Council cites Paragraph 187 of the National Planning Policy Framework (NPPF). This, in summary, underlines that decisions should ensure that new development can be integrated effectively with existing businesses and community facilities without unreasonable restrictions having to be placed on them as a result of newer development permitted. To avoid this the onus is on the applicant (or 'agent of change') to provide suitable mitigation before the development has been completed.
7. On a general point I note that numerous residential premises are in close proximity to the business premises in question and that the Council does not provide any records of noise complaints. I also note that the Council's Environmental Health Officer has not raised objections to the appeal scheme. Nevertheless, it is not unreasonable for the Council to be cautious on this matter and for the onus to be placed on the Appellant. With that in mind an Acoustic Report is in the application bundle and I found its conclusions on glazing specifications, mechanical ventilation and acoustic fencing convincing. The layout of the planned premises and solid side walling of the flat will undoubtedly help prevent noise ingress from the most active parts of adjoining sites. I see no reason why with this layout and design and incorporating the recommendations of the Acoustic Report that suitable mitigation could not be provided before a resident occupies the home.
8. In all the circumstances I conclude that the proposal would not conflict paragraph 187 of the NPPF; acceptable mitigation would be provided to prevent unreasonable restrictions being placed on nearby existing businesses.

Living conditions

9. The Council is concerned that in adjoining an outdoor seating area for a restaurant and a car park, residents would have high levels of noise disturbance inside and poor outdoor amenity space due to noise and air quality impacts. As a second factor the Council is of the opinion that outlook would be limited due to the long narrow single-aspect arrangement. In all it is felt that the proposed dwelling would offer a poor living environment.
10. I touch on the relationship to the adjoining commercial uses above. It seems to me that the single aspect arrangement, with solid walls along both external sides and with mechanical ventilation and the glazing on the south side not directly facing core activities, would be a very helpful disposition. I do not consider that some use of a tightly accessed and modest private parking area, outdoor seating space for local businesses, or those main premises themselves

would give rise to unacceptable noise conditions. There is a recognition of those living in higher density mixed use areas that there will never be complete peace and quiet. However, I see no reason why a future inhabitant here would suffer any more disturbance than, for example, one of the many nearby flats which have fenestration facing a very busy road at the front, have business premises below them, and look out on the same commercial uses to the rear.

11. Similarly, I am at something of a loss to understand the air quality concerns. There seemed to me to be very little scope for very extensive coming and going from the modest car park and no evidence of any other direct air polluters being within the environs of the proposed flat. Indeed I would assume that the air quality for the future resident here would be better than those of occupiers of the nearby main-road facing flats. I would envisage the planned garden area to be quite usable with reasonable air quality prevailing.
12. In terms of outlook and internal arrangements I also take a differing view from the Council. The two main rooms would be south facing with extensive glazing and direct access to a reasonable sized level rear garden area. The linear arrangement is well used by the facilities not needing this degree of natural light being sited to the rear. Roof lights are also incorporated into the design. Access to the home would be available via the main street to the front or the rear service area. In my opinion it would be a reasonable one bed flat.
13. Policy DM20 of the Brighton and Hove City Plan Part Two is pertinent. Amongst other matters it seeks to ensure that any residential proposal would provide a good standard of amenity for future occupiers. Given the foregoing I would conclude that the appeal scheme would not conflict with this policy.

Conditions

14. The standard commencement period should apply. A condition that works are to be carried out in accordance with listed, approved, plans is put forward; I would agree to provide certainty. Refuse and recycling arrangements should be fixed in the interests of residential amenity as should cycle parking in the interests of encouraging sustainable travel. I agree with the Council's proposition on bee brick provision in the interests of biodiversity. A requirement to adhere to the recommendations of the pertinent Acoustic Report is necessary in the interests of residential amenity. Boundary treatment should also be agreed for reasons of visual amenity and to assist in acoustic mitigation.

Overall conclusion

- 15.** For the reasons given above I conclude that the appeal proposal would not have unacceptable adverse effects on the future operation of nearby premises or on living conditions for future residents. Accordingly, the appeal is allowed.

D Cramond

INSPECTOR

SCHEDULE OF CONDITIONS (7)

1. The development to which this permission relates shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 41360/1A & 41360/2A.
3. The development hereby permitted 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.
4. The development hereby permitted shall not be occupied until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.
5. A bee brick shall be incorporated within the external wall of the dwelling hereby approved and shall be retained thereafter.
6. The development hereby permitted shall not be occupied until a plan detailing the positions, height, design, materials and type of all existing and proposed boundary treatments shall has been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be provided in accordance with the approved details prior to occupation of the development and shall thereafter be retained at all times.
7. The development hereby permitted not be occupied until the recommendations of the submitted Acoustic Report dated 21st February 2022 have been fully implemented.