



Appeal Decision

Site visit made on 3 July 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/Q1445/W/22/3312893

34 Chesham Road, Brighton BN2 1NB

- 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 Mark Christon against the decision of Brighton & Hove City Council.
 - The application Ref BH2022/02499, dated 5 August 2022, was refused by notice dated 28 October 2022.
 - The development proposed is conversion of ground floor commercial unit and lower ground floor residential unit into a residential maisonette.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of ground floor commercial unit and lower ground floor residential unit into a residential maisonette at 34 Chesham Road, Brighton BN2 1NB in accordance with the terms of the application, Ref BH2022/02499, dated 5 August 2022, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - a) whether the proposal would comply with development plan policy in respect of economic development and the loss of community facilities;
 - b) whether the development would provide adequate living conditions for future occupants, with particular regard to natural light and ventilation; and
 - c) whether there are material considerations to outweigh any policy conflict in respect of the above matters, sufficient to justify a grant of permission.

Reasons

3. No 34 Chesham Road lies within the East Cliff Conservation Area. The building is in mixed use and comprises a basement flat, osteopath business at ground floor and a residential maisonette at first and second floors. The proposal is to convert the commercial premises to residential use by incorporating it into a new maisonette across the basement and ground floors.

Principle of development

4. Policy DM9 of the Brighton and Hove City Plan Part Two (2022) (CPP2) relates to community facilities. This term is defined to encompass a wide range of facilities and services which are defined in national policy as being social, recreational and cultural in nature, including medical or health services (use

class E(e)). There is no dispute that the use of the appeal premises by an osteopath would fall under this category and constitute a community facility.

5. The policy sets out the circumstances when the loss of a community facility would be permitted. In summary, this would include where replacement facilities will be provided, where the facility is no longer needed and suitable alternative provision is available in a location easily accessible to users of the facility, where the building is no longer suitable to accommodate the current use, or where it has been demonstrated that there is no current or future need or demand for the space and evidence of marketing for community use has been provided.
6. Whilst I note that other osteopaths practice locally, there is no substantive evidence to demonstrate that the osteopathy clinic at the appeal site is no longer needed or that the premises are no longer suitable for the current use. The proposal makes no provision to relocate the clinic and moreover there has been no marketing of the building for community use. As such, there would be conflict with Policy DM9 and with the objective of Policy CP2 of the Brighton and Hove City Plan Part One (2016) (CPP1) to encourage sustainable economic growth by retaining existing businesses.

Living conditions

7. The basement flat was being renovated at the time of my visit. However, the existing plans show a layout comprising a bedroom at the front of the property, and a living room behind with a kitchen and bathroom in a rear outrigger. The living room is served by a set of fully glazed French doors opening onto a small yard, whereas the bedroom receives borrowed light from the living room and some additional daylight through a translucent pavement light.
8. The proposal is to convert the commercial premises to a pair of bedrooms with en-suite bathrooms and to provide a third bedroom in the basement within the rear outrigger. The living room would remain in its current position with a new kitchen and dining room provided at the front of the basement, nearest the street. The latter room would be served by a new staircase leading up to an entrance vestibule and a door onto the street.
9. The Council contends that the proposed layout would result in a poor standard of accommodation for future occupiers by reason of inadequate outlook and natural ventilation to a habitable room. The kitchen and dining room would have no window of its own, but the construction of a new stairwell would provide an opportunity to improve living conditions within the basement by drawing natural light from the shop window above. This would be in addition to any daylight received by the lightwell, which would be retained, and borrowed light from the living room. Airflow through the building would also be improved by the introduction of the new stairwell and entrance vestibule.
10. The application is not accompanied by a daylight and sunlight assessment. Nevertheless, I consider that the living environment within the proposed maisonette would be acceptable and a material improvement over that provided in the existing basement flat in which the bedroom is gloomy and reliant upon artificial light. There would be no conflict with Policy DM1 of the CPP2 which seeks, amongst other things, the delivery of high-quality homes.

Other material considerations

11. The appellant argues that there is a fallback position in that the business premises at ground floor could be converted to residential (C3) use by virtue of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). Class MA comes with limitations and conditions, including that an application for prior approval is required in relation to the matters specified under Paragraph M.2(2). Whilst there has been no such application, there is no dispute that the change of use would meet the limitations set out in Paragraph M.1, with the exception of criterion (a) which requires the building to have been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. There is no requirement for marketing and the appellant has stated that it is their firm intention to terminate the lease for the osteopathy clinic with a view to pursuing a Class MA conversion of the ground floor to a 1-bedroom 1-person studio flat. This would meet the Nationally Described Space Standard but would not provide any private outdoor space, making the living environment of lower quality than the proposed maisonette.
12. The Council makes no suggestion that an application for prior approval would be likely to be refused, and I have seen no substantive evidence to indicate potential harm in respect of transport impacts, contamination risks or noise. The ground floor of the building has windows front and rear, including a large shop window onto the street which could be retained, and therefore I do not anticipate there being any concerns over the provision of natural light to habitable rooms. Paragraph M.2(2)(e) states that where the building is located in a conservation area, and the development involves a change of use of the whole or part of the ground floor, the impact on the character or sustainability of the conservation area should be considered. The Council's position on this is not set out within the evidence, but I note that the site lies outside of an area covered by an Article 4 direction removing Class MA permitted development rights in other parts of the conservation area.
13. I do not need to have absolute certainty that prior approval would be granted. Nevertheless, based on the available information, there is a considerable likelihood of an approval being granted under that procedure. The appellant's clearly stated intentions mean that there is a real prospect of the permitted development fallback being implemented. This carries significant weight as a material consideration. I note in this regard that Paragraph 2.80 of the CPP2 states that some changes of use fall under permitted development and would not be covered by the scope of Policy DM9. This does not have the status of policy but is an acknowledgement of the realities brought about by Class MA and other permitted changes of use under Schedule 2, Part 3 of the Order.
14. I have seen no evidence on the current availability of alternative premises for the existing business but note that the appellant identified various potential options in a letter to the local planning authority during the application. I am mindful that, since the introduction of a new Class E within the Town and Country Planning (Use Classes) Order, medical and health services can now occupy a much wider range of premises without needing planning permission. As such, the evidence is not sufficient to persuade me that the osteopathy business would be unable to relocate in the event of the appeal being allowed.

Other Matters

15. The proposal would retain the traditional shopfront and consequently there would be no change to the appearance of the building. The loss of the commercial use would alter the balance of uses in the street, but not to the extent that the character of this part of the conservation area would be harmed.
16. Interested parties have raised a range of planning concerns in respect of matters such as the loss of the existing osteopath use, design, residential amenity, additional traffic, bin and refuse issues and the need for affordable housing. Some of these issues have been covered elsewhere in my reasoning but having regard to the information before me none of the matters would justify a refusal of planning permission.

Planning Balance and Conclusion

17. The proposal would displace an existing business which, judging by the representations received, is a well-established, popular, viable and valued community facility. However, there is no evidence to indicate that the business would be lost as there is the option for it to relocate. I appreciate that there is no certainty on alternative premises as, so far as I am aware, they are yet to be identified and secured. Nevertheless, the status of medical and health services as a Class E use widens the choice of potential premises.
18. But in any case, the indications are that the appellant would implement a permitted development scheme to convert the ground floor to a studio flat in the event of the appeal failing, and this would result in the osteopath clinic being given notice on its tenancy. I am satisfied, based on the appellant's submissions, that the fallback is more than hypothetical and that there is a real prospect of it being implemented. This carries substantial weight as a material consideration. That the proposal would be an improvement upon the fallback scheme in terms of the quality of the living environment is a further factor in favour of the scheme.
19. Overall, whilst the proposal would conflict with CPP2 Policy DM9 and CPP1 Policy CP2 in respect of community facilities and economic growth, there are material considerations in this case which outweigh that conflict and justify a decision otherwise than in accordance with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

20. In addition to the standard commencement condition, I have attached a condition specifying the approved plans in the interests of certainty. To ensure compliance with Policy DM44 of the CPP2, I have also attached a condition requiring the development to conform to a minimum energy Performance Certificate EPC rating of 'C' which is the policy requirement for conversions and changes of use of existing buildings.

Robert Parker

INSPECTOR

SCHEDULE OF 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 full accordance with drawings 472.100, 472.07 .a and 472.08 .a.
- 3) The development hereby permitted shall achieve a minimum Energy Performance Certificate (EPC) rating 'C' (for conversions and changes of use of existing buildings).

*** END OF CONDITIONS ***