



Appeal Decision

Site visit made on 26 September 2023

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2023

Appeal Ref: APP/Q1445/W/22/3310420

Oriental Hotel, 9 Oriental Place, Brighton BN1 2LJ

- 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 Ms L O'Keefe against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/04392, dated 13 December 2021, was refused by notice dated 9 September 2022.
 - The development proposed is a partial change of use to create events space and C3 maisonette including internal alterations.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Ms L O'Keefe against the decision of Brighton and Hove City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application form gave the description of the development as set out in the above banner heading. However, the appeal form, and the Council's decision notice set out a more detailed description as: 'a partial change of use from hotel (C1) to 1no four-bedroom maisonette (C3) at upper floor levels and creation of events space at ground floor level with 2no hotel rooms (C1) retained'. As this is a more accurate description of the proposal, I have used this in my assessment.
4. Oriental Hotel (No 9) is a part of a Grade II* listed terrace: Nos 1-18 Oriental Place. An application for listed building consent for internal alterations to facilitate the partial change of use was submitted concurrently with the application for planning permission. This has subsequently been refused. However, the appellant is not pursuing that decision until the current appeal has been determined. I have had regard to this situation in assessing the proposal before me.
5. On my site visit I saw that the hotel has ceased trading. However, although some beds and furniture have been removed, no physical alterations have been made to the building, so the facilities to enable its use as a hotel/guest house remain in place.

6. On 20 October 2022, after this application was determined, the Council adopted the Brighton & Hove City Plan Part 2 (City Plan P2). Consequently, Policy QD27 of the Brighton & Hove Local Plan has been replaced by Policy DM20 of the City Plan P2 which is the relevant policy for assessing the scheme in relation effects on adjoining occupiers which was the Council's second reason for refusal.

Main Issue

7. The main issue is whether the change of use is justified having regard to the provision of hotel/guest house accommodation in the city and its effect on adjoining occupiers.

Reasons

8. The Oriental Hotel was previously operated as a boutique bed and breakfast guest house located close to Brighton seafront. The guest house offered 9 rooms, all with en-suite facilities, on 5 of the property's 6 floors. The ground floor had a communal room for guests with a reception area, bar, and lounge and one hotel room towards the rear of the building. The remaining 8 rooms were spread across the upper floors. The owner/manager of the hotel originally lived in the lower ground floor flat at No 9 (C3 use). However, since trading ceased, she is occupying the whole building as living accommodation and for the storage of domestic items.
9. Tourism and business conference activities are vital to Brighton & Hove's economy. Policy CP6 of the Brighton & Hove City Plan Part 1 (City Plan P1) supports the provision of a sufficient and wide-ranging type of visitor accommodation. In doing so, it supports new hotel accommodation, extensions required to upgrade accommodation and partial conversions to enable investment in the remainder of a hotel. The plan identified a Hotel Core Zone (HCZ) around the city centre and main tourist attractions. The Oriental Hotel is on the western edge of the HCZ. Point 6 of Policy CP6 (CP6.6) states that the loss of hotels/guest houses (serviced accommodation) within the HCZ will be considered when it can be demonstrated that certain criteria have been met.
10. The proposal seeks a reduction in the number of bedrooms from 9 to 2. There would be just one guest room on each of the ground and first floors. They are the least attractive rooms as they are towards the rear of the building, have limited outlook and are smaller than the others. Although future occupants would be provided with bed linen and towels, there would be no reception area, no lounge, no bar, and no meals. Entry to the accommodation would be via the front door which would be shared with the appellant as owner/occupier of the proposed maisonette. Staying in one of the retained rooms, would be a different experience from what was previously on offer. The level of service would not be comparable with that normally offered by a hotel or guest house. It would be much more akin to the facilities offered by 'Air-BnB' style accommodation which offers lodging, but little else.
11. The proposed change of use would therefore result in a significant loss of the quantity and quality of accommodation which could be described as a C1 use. For this change to be acceptable, together with the introduction of the proposed dwelling and events space, it is necessary to assess the scheme against the criteria set out in Policy CP6.6.

a) Viability

12. The first criterion relates to the viability of the business. Paragraphs 4.58-4.69 of the supporting text to Policy CP6 recognises that there is a need for flexibility to ensure that there is a balance between demand and supply for visitor accommodation. Nevertheless, it states that existing hotel and guest accommodation within the defined area of the city will be protected unless non-viability can be demonstrated. The HCZ is around the main accommodation clusters and the drivers of demand. To meet the requirements of Policy CP6.6, changes of use will need to be accompanied by proof of marketing the business for sale, and evidence of business performance and professional management to attract clients.
13. The hotel has ceased trading and the appellant has indicated she wishes to continue to live on site and give more time to raising her family. The hotel has therefore not been marketed as a going concern. The appellant stated that by living on the premises she worked longer hours operating the hotel than someone employed as a manager. However, other than suggesting that the business would not be sufficiently viable to pay a salary of £30k/annum to employ a manager, no other financial information was provided. The absence of any substantive information relating to the finances of the business when it was operating means that there is nothing to demonstrate that the hotel is not viably positioned within the market. The proposal does not comply with criterion a) of Policy CP6.6 and there is no justification for the change of use. In this respect, the appeal proposal differs from an application for a change of use at No 19 Oriental Place, which was permitted following the submission of marketing information.

b) Unacceptable precedent

14. The evidence presented provided details of how visitor accommodation is spread throughout the HCZ and a little beyond it to the west. The appeal site's location makes it somewhat less accessible than accommodation which is more centrally situated. However, it does not follow that it is less important to retain a spread of facilities throughout the area.
15. Additional hotel accommodation has been approved recently in locations closer to the centre of the city. This would seem to be compliant with the sequential approach set out in Policy CP6.1. Retaining a diversity of accommodation is also important, so there is nothing to suggest that approval of other schemes would be a justification for permitting the loss of other guest accommodation that is in another part of the HCZ. I therefore consider that there is no support for the current proposal from criterion b) of Policy CP6.6.

c) Compatibility with other uses

16. The proposal would retain the lower ground floor flat and create a family dwelling spread over the first to fourth floors. Insofar as there are other properties in residential use in Oriental Place, this element of the conversion would be compatible with the character of the surrounding area.
17. The change of use also seeks to use the ground floor as an 'events space'. The ground floor room is of modest proportions and its narrow shape is not conducive to its occupation by many people. However, concerns have been raised about additional comings and goings at events, especially in the

evenings when occupants of the flat on the lower ground floor, the maisonette on the upper floors and neighbours could be disturbed by noise. This can be a difficult issue to address in a listed building where opportunities to improve soundproofing are limited by the need to protect the historic fabric and features of the building.

18. The appellant has contended that such concerns could be addressed by the imposition of appropriate conditions. To be acceptable conditions would have to comply with the tests set out in paragraph 56 of the National Planning Policy Framework. A condition restricting the number of people who could attend events, particularly in the evening, would be difficult for the Council to enforce. However, a condition restricting the hours of operation of events would be precise and enforceable and could be used to mitigate the potential for unacceptable disturbance in the evenings.
19. The Council also suggested the possibility of a noise management plan. Whilst this might be appropriate for a public house or night club, it would seem to be more onerous than necessary to control activities at this small venue. I consider the potential for noise disturbance could be kept to within reasonable limits if, in addition to limiting the operational hours, there was a condition preventing use of live or amplified music. This is a matter which could have been considered further if the proposal was acceptable in all other respects.
20. I am therefore satisfied that, subject to the imposition of appropriate conditions, the change of use to a dwelling and a small events space, would be compatible with the character and other uses in the area. Consequently, there would be no conflict with criterion c) of Policy CP6.6. The use of the ground floor would not result in harm to the living conditions of neighbours arising from unacceptable noise or disturbance. It would therefore comply with Policy DM20 of the City Plan P2, which seeks to protect the city's residents from unacceptable loss of amenity.

Overall finding

21. Notwithstanding the compatibility of the change of use with the character and other uses in the area, the proposal would lead to the unacceptable and unjustified loss of hotel/guest house accommodation in the HCZ. This would be the case even with the retention of 2 guest rooms available for use as lodging with the provision of only linen and towels. The proposal would therefore conflict with the criteria a) and b) of Policy CP6.6 of the City Plan P1 and undermine the Council's strategy of protecting and retaining the city's hotels/guest houses.

Other Considerations

Housing need

22. The Council did not raise concerns about the size of the proposed maisonette in its original assessment of the proposal. However, in responding to the appeal it provided a copy of Policy CP19 of the City Plan P1 which sets out the Council's approach to addressing the city's housing needs. Criterion c) of that policy states that windfall development, which could include conversion of an existing building, should be informed by local housing need and demand. The supporting text indicates that the greatest demand (65%) is likely to be for 2 and 3-bedroom properties with only 11% for 4 or more bedrooms.

23. The maisonette would comprise a living room/kitchen, dining room, study/office and 4 bedrooms spread over 4 floors of the building. It would therefore be exceptionally generous in terms of internal space and would not contribute to meeting the priority local need for 2 and 3-bedroom homes. In addition, the need to climb multiple flights of stairs and the lack of private amenity space would not make the accommodation especially suitable for a family. Furthermore, it is not clear how the maisonette would be kept secure and separate from the visitor accommodation. Works required to achieve this are likely to require listed building consent. This would be an unusual, awkward arrangement making it difficult to retain 2 guest rooms whilst using the rest of the building as a private family home. These factors significantly reduce the benefits to be attributed to the additional dwelling in the planning balance.

Personal circumstances

24. I understand it is intended that the appellant's mother would occupy the lower ground floor flat, whilst the appellant wishes to live in the proposed maisonette created within the rest of the property. Having become a parent, she considers it is no longer possible for her to work excessively long hours to maintain the viability of the business, particularly in the face of competition from 'Air-BnB' style accommodation. Hence the proposal to retain just two guest rooms in C1 use. However, whilst that might be the intention, no further details of how this reduced business would be promoted or operated viably was provided.
25. I appreciate that the space available in the lower ground floor flat is inadequate for a family and reducing the scale of the hotel operation would provide the appellant with more time to look after her family. However, most of the building would be used to create the 4-bedroom home described above. Whilst this would meet her aspirations for a good-sized home and allow her to operate the business on a reduced scale, it could only be achieved with the loss of most of the accommodation for guests. However, there can be no guarantee that the C1 use would continue and once combined with the use of most of the building as a private home, it would be difficult for the Council to enforce.
26. Planning decisions are primarily concerned with the use of land in the public interest over the long term, whereas the personal circumstances of the appellant will change over time. Therefore, whilst it is understandable that the appellant does not wish to move, that is not a justification for permitting the long-term loss of hotel accommodation within the HCZ. For that to be acceptable, there needs to be substantive evidence that the business is no longer viable or that it could not be adapted in a way that would meet the appellant's reasonable needs for accommodation whilst retaining more of the building as a hotel/guest house.

Planning Balance

27. It is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing sites; the shortage is acute and at the time the application was determined stood at just 2.1 years. Since then, it has deteriorated to 1.8 years. In these circumstances, notwithstanding the recent adoption of the City Plan P2, paragraph 11 d) of the National Planning Policy Framework is engaged. However, the most important policy for determining the appeal, namely Policy CP6.6, is consistent with the Framework's aim of supporting a strong economy and ensuring that activities to support economic growth are appropriately located.

28. In this case ensuring that hotel and guest accommodation is conveniently sited in relation to the city's main tourist attractions and business conference facilities is an important part of the Council's strategy for a prosperous city. The proposal would reduce both the quantity and the quality of guest accommodation. Consequently, conflict with Policy CP6.6 carries significant weight in the planning balance.
29. The proposal would increase housing supply by providing a 4-bedroom maisonette which would share an entrance with the retained guest rooms. For the reasons given above, the weight that can be given to the benefit associated with this additional dwelling is very limited. Whilst the Framework advocates the use of small sites which can be delivered quickly, it also requires housing to meet local needs and to ensure that development functions well over its lifetime. The proposal would not meet these objectives. The economic benefits associated with the provision of a small events space on the ground floor would also be limited.
30. On the other hand, in the absence of information to demonstrate that the hotel business is not viable, the proposal would result in the loss of 7 rooms of good quality visitor accommodation close to the city centre. The remaining 2 guest rooms at the rear of the building would provide reduced quality accommodation restricted to lodging, linen, and towels. Given the importance of visitor accommodation to the economy of Brighton and Hove, and the proximity of the hotel to the visitor attractions that are clustered in the city centre and along the seafront, these are critical factors against the scheme which carry significant weight in the balance. The proposal would therefore be at odds with the Framework's objective of supporting a strong, competitive economy in line with local policies for economic development, allowing areas to build on their strengths.
31. This leads me to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the limited benefits when assessed against the Framework as a whole. The presumption in favour of sustainable development therefore does not apply to this case.

Conclusion

32. The proposal would be contrary to the development plan. There are no other considerations, including the Council's acute shortage of housing land and the appellant's personal circumstances, which indicate that a decision should be taken other than in accordance with the development plan.
33. For these reasons, the appeal is dismissed.

S M Holden

INSPECTOR