



Appeal Decision

Site visit made on 22 September 2023

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2023

Appeal Ref: APP/Q1445/W/23/3318922

5 The Drive, Hove BN3 3JE

- 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 & Mrs D and M McCormick against the decision of Brighton & Hove City Council.
 - The application Ref: BH2022/02892, dated 8 September 2022, was refused by notice dated 19 January 2023.
 - The development proposed is for the change of use of upper floors (Commercial Class E) to Residential (C3).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The parties are in agreement that the Council cannot demonstrate a 5-year supply of housing; the information provided in the appeal confirms that the Council can currently demonstrate only 1.8 years of deliverable housing supply. In these circumstances Paragraph 11 of the National Planning Policy Framework ('the Framework') states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. I return to this matter in my 'Planning Balance and Conclusion' section, below.

Main Issue

3. The main issue in this appeal is whether the change of use of the building to residential would result in the unacceptable loss of community and office facilities.

Reasons

4. The appeal property is a five storey end of terrace property located within the urban area of Hove. The appeal site is in a highly accessible location close to public transport and a range of shops and amenities. The surrounding area comprises a mix of residential use and commercial premises.
5. The proposal seeks to change the use of the 1st, 2nd and 3rd floors of the building from Class E uses to residential. The information provided refers to these floors currently being used as a physiotherapy centre. However, I observed on the site visit that the 1st floor is being actively used as a physiotherapy centre, whereas the 2nd and 3rd floors are being actively used as

an office for financial services. This doesn't affect the description of development as both existing uses are within Class E but does require different policy tests to be considered in this decision.

6. With respect to the proposed loss of the physiotherapy centre on the 1st floor, all parties agree this is a community facility to which Policy DM9 of the Brighton & Hove City Plan Part 2 (2022) applies. DM9 (2) has 4 criteria, of which one needs to be met in order for a loss of a community facility to be acceptable. DM9 (2) (a) relates to replacement facilities being provided as part of new development, which is not applicable in this case. DM9 (2) (b) is where the facility is no longer needed and suitable alternative provision with sufficient capacity is available in a location easily accessible to users. The appellant has provided some information that indicates that there is alternative physiotherapy provision near to the appeal site. However, no information has been provided whether the appeal site's facility is no longer needed or whether the alternative provision has sufficient capacity to absorb the proposed loss. Therefore, DM9 (2) (b) has not been satisfied by the information presented.
7. DM9 (2) (c) is that the building or land is no longer suitable to accommodate the current or alternative community use and cannot be reasonably adapted. Given that the facility is being actively used and no evidence has been provided to show that the building is no longer suitable for its continued use, this criterion is not met. DM9 (2) (d) relates again to demonstrating there is no current or future need or demand for the space either in its current use or any alternative community use and requires evidence of marketing to be provided. No marketing exercise has been undertaken or any evidence provided that the facility is no longer needed. It is clear that the appeal proposal is in conflict with Policy DM9 of the City Plan Part 2.
8. Turning to the proposed loss of the offices at 2nd and 3rd floor, both the Council and the appellant have confirmed that Policy CP3 of the Brighton and Hove City Plan Part 1 (2016) applies, which seeks to safeguard sufficient employment sites to meet the job creation needs of the city to 2030. CP3 (5) only allows the loss of unallocated sites in employment use where it can be demonstrated the site or premises are redundant and incapable of meeting the needs of alternative employment uses (the policy refers to Use Classes B1-B8, some of which have since been replaced by Class E). No evidence has been provided that demonstrates that the site or premises are not needed or incapable of meeting needs of alternative employment uses. It is clear that the appeal proposal is contrary to Policy CP3 of the City Plan Part 1.
9. In summary, it has not been demonstrated that the community and office uses within the appeal property are no longer needed, or their loss would be offset by other provision for similar facilities elsewhere in the city. For this reason I conclude that the appeal proposal does not accord with Policy CP3 of the City Plan Part 1 and DM9 of the City Plan Part 2.
10. Whilst the Framework emphasises the importance of housing, it also at paragraph 93 confirms that planning policies and decisions should plan positively for the provision of community facilities to enhance the sustainability of communities and residential environments. Without conclusive evidence whether the existing community facility is needed or not, the loss of the existing facility would result in clear harm contrary to the provisions of paragraph 93.

Other Matters

11. I acknowledge that the appeal proposal would deliver housing on a small site, which is identified in Paragraph 69 of the Framework as being an important source of housing supply. However, Paragraph 69 refers to these benefits being realised from suitable sites; the suitability of the site and ability to realise a quick build out is questionable in this case given that the building is occupied by active alternative uses at present. With regard to Paragraph 125 of the Framework and ensuring development makes optimal use of each site, the building is currently already occupied by a mix of uses. In view of this, it is not conclusively demonstrated that changing the use to residential would be a more optimal use of the site than the existing situation so I consider this to be a neutral factor in the planning balance.
12. The 3 dwellings proposed would all comply with the nationally described space standards and provide a mix of units in accordance with Policy CP19. The proposal would also include external amenity space by creating a roof terrace. I am satisfied therefore that the proposal would provide both a suitable living environment and type of residential occupation. However, as these benefits would be expected for any residential development in the city as a matter of course, I give these matters limited weight.
13. I also note the appellant considers the proposal would increase natural surveillance of the rear car park and access track. As no details have been provided to demonstrate this is a particular issue in the city I give this potential benefit only limited weight.
14. The site is within the Avenues Conservation Area. The duty under Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
15. With regard to the appeal site's location in The Avenues Conservation area, the proposal includes design changes including restoring original ballustrades and removal of a parapet, which is considered by the appellant to be a benefit of the scheme in heritage terms. The Council has not objected to the proposal on heritage grounds subject to conditions being attached to secure more details of the materials that would be used in the external alterations. It is not clear from the information provided whether the Council agree that the removal of the parapet would result in a material enhancement to the Conservation Area. Overall whilst I agree that subject to conditions there would not be harm to the Conservation Area and the duty under Section 72 is met, I consider that any enhancements that would arise in heritage terms would be modest and have limited weight in this case.
16. As set out above, it has not been demonstrated that the premises is no longer suitable or needed for community use or what is expected to happen to the business and employees of the existing occupant. Moreover, the same applies to the business and employees of the office use on the 2nd and 3rd floors and what would happen to them in the event of them being given notice to vacate and the building being converted to housing. No evidence has been provided as

to whether there is any alternative accommodation to absorb the proposed loss in this case. Building a strong, responsive and competitive economy is one of the Framework's three overarching objectives for achieving sustainable development, which would be undermined as a result of the appeal proposal.

17. I have also considered the appellant's position that a fallback exists through permitted development rights. However, this fallback does not yet exist as the building is not vacant meaning the permitted development rights do not apply. Whilst the existing tenants could be given notice to leave in order to create a vacant building from which the permitted development rights could then apply, I consider that this is not an immediately likely scenario in the context of an active existing use of the building. Moreover, no information is provided on the terms of the leases, which further questions whether the purported fallback exists in practice. I also acknowledge that the units could change to other uses within Class E and potentially bypass the CP3 and DM9 policy tests in the future. However, whilst these outcomes are theoretical possibilities I do not consider them immediately likely and give the potential of fallback limited weight in this decision.
18. I have also considered the appeal decisions provided by the appellant of examples of housing schemes allowed at appeal elsewhere in the city but do not consider they are directly comparable to the specific issues in this case as they were either or all related to assessing whether there would be harm to designated heritage assets and character of the area, which is not an issue in this appeal. Moreover, none of them involved the loss of community facilities as is proposed here.
19. It is asserted that in the absence of a 5 year supply, limited weight should be attached to the policies of the City Plan Part 1 and Part 2. However, the Framework does not prescribe the weight to be given to policies deemed to be out-of-date, and so this is a matter for the decision maker.

Planning Balance and Conclusion

20. As set out above, it has not been demonstrated that the community and office uses within the appeal property are no longer needed, or that their loss would be offset by other provision of similar facilities elsewhere in the city. The existing businesses which occupy the building could also be undermined by the loss of their current premises. The development would be contrary to the development plan in this regard, and I attach significant weight to this conflict.
21. Set against this, the development would make a modest contribution towards the supply of housing, in an accessible location, and on a small site within an existing settlement. It would also generate some economic benefits during the construction phase and through local expenditure by future residents. In view of the current shortfall in housing delivery, I attach moderate weight to these considerations. However, for the reasons given above, I attach only limited weight to the purported benefits to the conservation area, the increase in natural surveillance over the rear car park and access track, the proposed internal living space, and the purported fallback position.
22. On balance, and taking all matters into consideration, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits. The material considerations in this case do not indicate

that the proposal should be determined other than in accordance with the development plan.

23. For the reasons given above I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR