



Appeal Decision

Site visit made on 9 April 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15.05.2024

Appeal Ref: APP/Q1445/W/23/3330426

61 Church Road, Brighton and Hove, Hove BN3 2BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by A Ajmi against the decision of Brighton & Hove City Council.
 - The application Ref is BH2023/00415.
 - The development proposed is the formation of a one bedroom flat in an existing building. Change of use from Office Storage to Residential.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my site visit, I saw that the development had commenced, and I have dealt with the appeal on that basis.

Main Issue

3. The main issue is whether sufficient information has been presented to demonstrate that the loss of employment floorspace to residential use can be justified.

Reasons

4. The appeal property is a three storey terraced building which contains a basement and accommodation in the roof space. The first and second floor as well as the roof space are in use as studio flats, the ground floor and basement are vacant with the lawful use being Class E.
5. Policy CP3 of the Brighton & Hove City Plan Part One Brighton & Hove City Council's Development Plan March 2016 (DP1) states that the loss of unallocated site or premises in, or whose last use was, employment use will only be permitted where the site or premises can be demonstrated to be redundant and incapable of meeting the needs of alternative employment uses.
6. The supporting text sets out that redundancy and unsuitability for modern employment uses of unallocated sites or premises in employment use will be determined by considering a set criterion. Which amongst other things, includes documented evidence of the marketing strategy adopted, particularly whether it has been marketed at a price that reflects local market prices and attempts to make the building attractive to different business or employment uses (the length of marketing will need to reflect the size and nature of the site or premise and therefore whilst a year is considered a reasonable marketing

period for small sites/premises a longer period may be required for larger sites/premises).

7. I note that the appellant considers that the basement has not been previously used as a self-contained office, but instead storage for office uses elsewhere in the building. However, there is no dispute between the parties that the use of the basement falls within use Class E and although not used as a self-contained office, it was used as storage for employment uses within the rest of the building and therefore was still in employment use. As such, the requirements of Policy CP3 are relevant in the appeals consideration.
8. I observed on site that works to convert the basement have commenced and as such, it is unclear whether it was meeting any employment demand. However, I note that the ground floor has been vacant since March 2022 and therefore the appellant considers that the basement storage became redundant since this time.
9. Since March 2022 the appeal site has been vacant and not been marketed for any employment uses. The appellant considered the site to be in a poor state of repair, inadequately serviced and its layout, including the provision of a walk-in safe resulted in a design not suitable for tenants. However, even if the proposal would meet some of the criteria contained within the supporting text for CP3 of the DP1, in the absence of any marketing strategy I cannot be sure that it would not be suitable for different business or employment uses.
10. I therefore conclude that the proposal would conflict with Policy CP3 of the DP1, which among other things, seeks to ensure sufficient employment sites and premises will be safeguarded in order to meet the needs of the city to 2030 to support job creation, the needs of modern business and the attractiveness of the city as a business location.

Other Matters

11. The appellant has put forward a fallback position in that the basement could be converted to any use within Class E. I accept that the fallback position is available.
12. The appellant has stated that the lawful and unfettered Class E use of the site would allow for any use within this class to be introduced with specific reference to a gym or yoga studio. Although some works have already taken place it would still be possible to carry out the fallback position should this appeal fail. I therefore accept that there is a greater than theoretical possibility that the fallback would be implemented should the appeal scheme be dismissed. It is therefore a material consideration in the assessment of the proposal.
13. However, for significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme.
14. The fallback position would result in a use within Class E and even if this use was a gym or yoga studio these would still be used principally by visiting members of the public and would therefore still constitute an employment use. The fallback position would also still require the consideration against Policy CP3, including documented evidence of a marketing strategy before its loss could be considered.

15. Consequently, for these reasons considered cumulatively, the fallback position carries limited weight in favour of the proposal.

Planning Balance

16. The proposal would be contrary to Policy CP3 of the DP1. This Policy is consistent with the Framework in focusing on ensuring that proposals would not undermine key economic sectors or sites or the vitality and viability of town centres.
17. The Council conceded that it is unable to demonstrate a 5-year supply of deliverable housing sites in accordance with Paragraph 77 of the Framework. The figure quoted is a 1.8 year supply which is a substantial shortfall.
18. Paragraph 11 d) of the Framework indicates that, in such circumstances where the requisite housing land supply cannot be shown, the Policies which are important for determining the application should be deemed out-of-date and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the Policies in the Framework taken as a whole.
19. The proposed development would contribute to the supply of new homes in a situation where there is a shortfall. This attracts significant weight in favour of the proposed development. The proposal would also support the creation of jobs directly and indirectly during construction and result in future occupiers spending in the locality. Although this is tempered by the fact that the proposal is only for a single dwelling.
20. In this instance, the loss of employment space without sufficient justification would significantly and demonstrably outweigh the very modest benefits. As such, the proposal would not constitute a sustainable form of development in terms of the Framework.
21. Consequently, when assessed against the Policies in the Framework when taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits.

Conclusion

22. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

D Wilson

INSPECTOR