



Appeal Decision

Site visit made on 10 June 2013

by Simon Miles BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 June 2013

Appeal Ref: APP/Q1445/A/12/2189047
16 York Place, Brighton BN1 4GU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Hardwood Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/00236, dated 30 January 2012, was approved on 19 June 2012 and planning permission was granted subject to conditions.
 - The development permitted is installation of new shopfront and alterations to rear building including replacement roof.
 - The condition in dispute is No 2 which state that: "Notwithstanding condition No 3 no part of the single storey rear ground floor element of the development, the subject of this permission, shall be occupied as a residential use."
 - The reason given for the condition is: "For the avoidance of doubt Plan No DC/16YorkPI/01 indicates that the ground floor rear of the property is in residential use. The lawful use of that area is for ancillary storage for the commercial element and this permission shall not be taken, by implication or otherwise, to grant or confirm a residential use of any part of the ground floor of the property. In addition such use would be contrary to Local Plan Policy."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to 16 York Place, which includes a ground floor retail unit with a further building to the rear. Although the use of the upper floors is not in dispute, it is claimed for the appellant that the rear building has always been in residential use. However, I note that the rear building was dilapidated and had fallen out of use. As matters stand, there is no more than limited anecdotal evidence to indicate any former residential use.
 3. In this regard circumstances have not materially changed since this matter was considered under a recent enforcement appeal (Ref APP/Q1445/C/12/2179582). In that case the Inspector found there to be a general lack of evidence regarding the residential use of the rear ground floor element but it was probable that the change of use of the rear element from ancillary storage to a self-contained flat had occurred in breach of planning control as a matter of fact. There is no reason for me to proceed other than on the same basis.
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Main Issue

4. This is whether acceptable living conditions would be provided for potential occupiers of the rear building if it were to be used as a residential unit.

Reasons

5. The rear building provides a very small and confined space with limited light and outlook and no useable outdoor amenity space. The building is effectively a single room, which has been partitioned to provide a small bathroom in one corner. A small kitchenette occupies the opposite corner of the room. The remaining space is too restricted to offer any effective delineation between living and sleeping areas. My overall impression is of a very cramped and oppressive living environment.
6. I am therefore of the opinion that acceptable living conditions would not be provided for potential occupiers of the rear building if it were to be used as a residential unit. Such a use would therefore conflict with saved Policy QD7 of the adopted Brighton & Hove Local Plan 2005 in terms of the need to ensure that any development or change of use does not cause loss of amenity to the proposed occupiers. This policy is not inconsistent with the National Planning Policy Framework to the extent that this is concerned to deliver high quality homes and living environments.
7. In reaching this view, I have considered that there may be other existing small residential units to the rear of other nearby properties. However, I have no detailed information about the circumstances of any such cases, which are likely to be historical in any event. Particularly as each proposal must be assessed on its merits, I have based my assessment on the particular circumstances of the proposal before me.
8. Although permitted development rights were recently extended to allow a mixed use for any purpose within Class A1 (shops) and up to two flats, the conditions preclude such a use on the ground floor. Such rights do not therefore apply in the circumstances of this case. But in any event, even though permitted development rights should only be removed exceptionally, there may well be cases where this is justified. Indeed, my findings indicate that condition No 2 is necessary to avoid significant harm to the living conditions of potential occupiers of the rear building.
9. In conclusion, having considered all the relevant matters, I find that the appeal should not succeed. Accordingly, condition No 2 continues to apply.

Simon Miles

INSPECTOR