
Appeal Decision

Site visit made on 16 December 2013

by Louise Phillips MA (Cantab), MSc, MRTPI

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

Decision date: 21 January 2014

Appeal Ref: APP/Q1445/A/13/2204382

Port Hall Mews, Port Hall Road, Brighton, Sussex BN1 5PB

- 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 S Agar, Agar Property, against the decision of Brighton & Hove City Council.
 - The application Ref BH2012/03806, dated 23 November 2012, was refused by notice dated 28 June 2013.
 - The development proposed is described as "re-submission of BH2012/01901 for conversion of mews to form 6no. two-storey town houses and 2no. single storey cottages with associated garaging and parking".
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of the mews to form 6no. two-storey town houses and 2no. single storey cottages with associated garaging and parking at Port Hall Mews, Port Hall Road, Brighton, Sussex BN1 5PB in accordance with the terms of the application, Ref BH2012/03806, dated 23 November 2012, and the plans submitted with it, subject to the conditions set out in Annex 1.

Main Issue

2. The main issue is the effect of the proposed development on the employment opportunities available in the area.

Reasons

3. Port Hall Mews is a self-contained commercial site to the rear of residential properties on Dyke Road and Port Hall Road. Vehicle and pedestrian access is gained off Port Hall Road via a narrow drive which is stated to be in the ownership of 170 and 170A Dyke Road. There is also a right of way through the yard for the house at number 14 Port Hall Road just outside the site to the north east. The mews buildings comprise an L-shaped block of small, two-storey units referred to in the evidence as Blocks A and B, and a separate block of single storey garage units in Block C.
4. At the time of my site visit, part of Block C was in use as a garage workshop and the two flats which are stated to exist on the first floor of Block A were possibly occupied, but the rest of the units were vacant at both ground and first floor levels. It would appear that most of the vacant units were last in use

- as garage/workshops at ground floor level with associated offices and storage above.
5. The appeal scheme, which seeks to convert the buildings for residential use, is a resubmission of planning application reference BH2012/01901 which was refused by the Council in October 2012 for four reasons including the loss of the industrial/office use. This is now the only reason for refusal in relation to the present scheme and the Council is satisfied that the other reasons have either been addressed, or could be addressed by the imposition of appropriate planning conditions. Therefore, I have dealt with the appeal on the basis that the loss of the employment use is the principal matter of contention between the main parties.
 6. The case for the Council is that the appellant has not adequately demonstrated that the proposal complies with Policy EM3 of the Brighton and Hove Local Plan 2005 (Local Plan). To help achieve the Council's strategic priority of getting people into work, this policy requires that sites in industrial use are assessed against a set of criteria to determine whether or not they are suitable for modern industrial purposes before they are released for other uses. I consider that Policy EM3 is relevant to my decision in terms of assessing the potentially adverse impacts of the proposal. I also consider that the National Planning Policy Framework (the Framework) is relevant to my decision and I have taken particular account of the provisions referred to by the appellant in relation to the presumption in favour of sustainable development and housing land supply.
 7. The majority of the assessment criteria included within Policy EM3 relate to the physical suitability of the site for modern industrial purposes. In terms of its general location, the site is near to the centre of Brighton, and I can see no particular reason why access for employees by car, public transport or on foot should be difficult. More specifically, it is located within a primarily residential area and the appellant's marketing agent has suggested that a fear of complaints from the surrounding occupiers has deterred potential interest. However, the site is quite self-contained and no evidence has been provided to suggest that complaints have been an issue.
 8. The site would appear to include a sufficient mix of accommodation from which to run a small business or businesses, and had the buildings been adequately maintained, their quality would seem to be appropriate for their intended use. Therefore, while I note that the Council's Economic Development Officer has indicated that the site is not best suited to modern business requirements, I do not consider that it is fundamentally unsuitable in the terms of Policy EM3.
 9. In addition to the site specific assessment criteria, Policy EM3 requires regard to be had for the length of time the site has been vacant and for the efforts made to market it for employment uses. In terms of the first requirement, the Council states that much of the site was occupied until November 2012 and that because part of it is still in use, the site is not redundant. Whilst part of Block C is presently in business use, the occupier has provided a letter stating his intention to retire in the near future. Third parties have noted that this particular vacancy will not therefore arise out of viability issues, but the vacancy of the rest of the site, which appears to have been in use by a number of businesses in the past, would suggest a wider problem.
 10. In terms of the second requirement, the Council considers that the marketing strategy has been deficient because the premises have only been advertised as

a whole rather than as individual units which may appeal to start-up businesses. Whilst I recognise that the premises have now been marketed for sale and rent for some time, I agree that the Council's suggested approach might have been more successful, particularly given that the units are likely to have become available at different times. Similarly, while the appellant has stated that no interest came forward to use or redevelop the site for the Council's preferred live-work or affordable housing purposes, it does not appear that it has been specifically marketed for these uses. Therefore, in terms of marketing, I do not consider that the requirements of Policy EM3 have been fully met.

11. However, I have also had regard to the issues which the marketing agent has identified as having deterred interest in the site. These include a generally weak commercial property market; the need to maintain access over the yard for the adjoining house; and the present poor condition of Block C. Given the small size of the yard, I agree that the need to maintain the right of way would significantly reduce the space available for parking and storage and the problem would be exacerbated if the site were to be occupied by several different businesses. This would be likely to reduce the attractiveness of the site to potential occupiers.
12. Similarly, it seems reasonable to suggest that potential occupiers would be deterred by the financial investment required to bring the property up to standard, particularly in a depressed market. In this respect, I also note that the present landlord does not consider it viable to make a capital investment in the property. Thus the use of the site for commercial purposes in the near future is not without significant impediment and given it is largely vacant, I consider that the adverse impact of the proposed change of use on the employment opportunities available in the area would be diminished. In this context, I have considered the proposal in terms of the provisions of the Framework.
13. The additional housing proposed at the appeal site would be a benefit of the development. Paragraph 51 of the Framework states that applications for the change of use of commercial buildings to residential use should normally be approved where there is an identified need for additional housing in the area, provided that there are not strong economic reasons why such development would be inappropriate. The appellant has made an assessment of the Council's five-year supply of deliverable sites for housing and has found it to be insufficient. Given that the Council has not presented any evidence to the contrary, I must conclude that the appellant's findings are not in dispute and that paragraph 51 of the Framework therefore applies.
14. Furthermore, in the absence of a sufficient five-year supply, Policy EM3 of the Local Plan cannot be considered up to date under the terms of paragraph 49 of the Framework because it affects the supply of housing in this case. On this basis, I have considered the proposal in light of the presumption in favour of sustainable development set out at paragraph 14, which states that where relevant policies are out of date, planning 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 taken as a whole.

15. Given my conclusion that the adverse impact of the proposal on employment opportunities has been diminished by the present circumstances of the site, this would not outweigh the benefit of the additional housing. For the same reason, I further conclude that there are no strong economic reasons why the proposed development would be inappropriate. Therefore, in respect of the main issue of the appeal, I consider that the proposed development would be acceptable.

Other Matters

16. The Council has not raised any objection to the principle of providing housing on this site and it considers that most of the issues which led to the refusal of the previous application have either been addressed or could be dealt with by conditions. Nonetheless, in reaching my decision, I have taken account of the other matters raised by third parties.
17. A number of nearby residents consider that the scheme proposes too many units for the size of the site. Their associated concerns are that no private garden space would be provided with the dwellings; and that the number of cars using the access lane could present a danger to pedestrians using Port Hall Road, which could be exacerbated if cars were not able to turn within the site itself. The adjoining occupier at number 14 Port Hall Road is also concerned that cars parked within the site could block the right of way for her property.
18. In terms of the standard of accommodation to be provided, the Council has considered the issue of garden space and concluded that the mews nature of the development, combined with the close proximity of Dyke Road Park, would make the proposal acceptable in this regard. Therefore, I do not consider that this matter outweighs the benefit of the housing to be provided.
19. I am sympathetic to the objectors' concerns about cars using the site, particularly in relation to them parking within it because the yard is quite small. Whilst the Council states that there is spare capacity in the surrounding controlled parking zone, it seems likely that future occupiers would seek to park outside their homes for reasons of convenience.
20. Given that on-site parking space would be limited, and that the majority of it would be garage-based, I consider that there is the potential for congestion to occur within the site. This could affect general manoeuvring and the right of way, particularly because the owner of an area of hard standing adjacent to the lane has stated that it will be unavailable in the future for use by cars attending the site. However, the Council is satisfied that overall parking provision would be adequate and there is insufficient evidence to the contrary before me to warrant the dismissal of the appeal.
21. Furthermore, the matter of public interest about which I must be concerned, is whether the proposed development is likely to give rise to a highway safety issue. In this respect, the Council considers that the residential use of the site would be likely to generate fewer trips than the existing commercial use. He has also commented that there have been no reported incidents at or around the entrance to the site in the last five years. The balance of the evidence therefore suggests that the proposed development would not increase the risk to highway safety and might in fact improve it and my own impression of the access lane was that it was neither so narrow nor so long that vehicles could not use it safely.

22. The third party representations also make reference to Lifetime Homes requirements; refuse collection; and restrictive covenants. The Council, however, is satisfied that the proposal complies with Lifetime Homes requirements and that the relevant reason for refusing the previous application has been addressed. I also appreciate the concern that additional bins on Port Hall Road would look unsightly if it were necessary to take them there for collection, but it is not clear that this would be the case and my decision does not turn on the matter. Finally, restrictive covenants are private legal agreements between parties, made for their own purposes and enforceable by their beneficiaries. Like other regulatory systems, they operate outside the planning system and are not related to it. They are not relevant to my decision and my decision does not override them.
23. Therefore, these other matters do not outweigh my findings in relation to the main issue of the appeal.

Conclusion and Conditions

24. For the reasons given above I conclude that the appeal should be allowed.
25. I have imposed the standard time limit condition because it has not been suggested that this would be inappropriate in this case. For the avoidance of doubt, and in the interests of proper planning, I have also imposed a condition requiring that the development is carried out in accordance with the approved plans. The Council has suggested a number other conditions in addition which I have considered in light of the advice in Circular 11/95: The Use of Conditions in Planning Permissions.
26. Given its previous industrial use, it is appropriate to impose a condition requiring the site to be investigated for contaminants and, if necessary, requiring any remedial work to be carried out. I consider that conditions requiring the submission and approval of further details relating to the EcoHomes Refurbishment Rating of the dwellings and the provision of cycle parking are necessary to secure a development of the quality expected by the Council in accordance with its adopted policies. In respect of the EcoHomes rating, I note that after 1 July 2014, it will no longer be possible to register for an EcoHomes Refurbishment Rating as the BREEAM Domestic Refurbishment scheme has replaced it. Therefore, the condition allows for the dwellings to be assessed under an equivalent successor scheme.
27. In the interests of the character and appearance of the area and of the living conditions of existing nearby residents and future residents of the development, I have imposed conditions requiring the areas for parking, refuse and recycling to be kept available for those purposes.
28. I have also considered the living conditions of the adjacent properties on Dyke Road in terms of privacy. The rear facing first floor windows of the dwellings in Block A will face the gardens and rear windows of numbers 174-178 Dyke Road (shown as numbers 118-120 on the submitted Location Plan) in close proximity. These windows would serve a hallway; a bedroom; and a living/dining room. I agree with the Council that these windows should be obscure glazed to prevent significant overlooking and given that both the bedroom and living/dining room would have another window to the front, this would not impact unduly upon the living conditions of future occupiers.

29. The rear facing first floor windows of the dwellings in Block B would face the side boundary of the garden of number 182 Dyke Road (shown as number 122 on the submitted Location Plan). These windows would serve a kitchen and a landing/hallway and the Council has suggested that they should also be obscure glazed. However, given the proposed use of the rooms; that there is an access road between the mews buildings and the boundary; and that there is some boundary screening present, I do not consider that this measure is necessary to preserve good living conditions for the neighbouring occupiers. Furthermore, given the depth of the rooms that the windows would serve, they would provide a significant source of light for the new dwellings.
30. Finally, I recognise that the Council's Senior Economic Development Officer has requested a contribution of £4,000 towards a Local Employment Scheme. However, no planning obligation has been provided and the Courts have held that conditions requiring the payment of money are *ultra vires*. In any case, no detailed justification has been provided in support of the requirement and so there is insufficient evidence for me to conclude that it is necessary in the terms of Regulation 122 of the Community Infrastructure Levy Regulations 2010 or paragraph 204 of the Framework.

Louise Phillips

INSPECTOR

Annex 1 – Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: "Proposed Details", drawing number 28724/2A.
- 3) No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remedy the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be decontaminated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which was not identified in the site investigation, additional measures for the removal of this source of contamination shall be submitted to and approved in writing by the local planning authority. The decontamination of the site shall incorporate the approved additional measures.

- 4) The dwellings hereby approved shall achieve an 'excellent' EcoHomes Refurbishment Rating (or an equivalent rating under an equivalent successor scheme). No dwelling shall be occupied until an appropriate certificate has been issued for it by the Building Research Establishment confirming that an 'excellent' rating has been achieved.
- 5) The garages and car parking spaces to be provided shall be kept available for the parking of motor vehicles at all times. The garages and car parking spaces shall be used solely for the benefit of the occupants of the dwelling of which it forms part and for that of their visitors and for no other purpose and shall be permanently retained as such thereafter.
- 6) Notwithstanding condition 2 above, no development shall take place until details of the secure cycle parking facilities to be provided for the occupants of, and visitors to, the dwellings hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Before the dwellings hereby approved are occupied, the refuse and recycling storage facilities shall be completed in accordance with the approved plans and shall be kept available for such use thereafter. No development whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting that order) shall be carried out on the land indicated or in such a position as to preclude its use for refuse and recycling storage.
- 8) Before the first occupation of the dwellings in Block A hereby permitted the windows in the rear elevation of Block A shall be fitted with obscured glass and shall be permanently retained in that condition.