The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2015

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 13 February 2015

Appeal Ref: APP/Q1445/A/14/2220926
93 St Leonards Gardens, Hove, East Sussex BN3 4QQ

- 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 Tony Camps-Linney against the decision of Brighton & Hove City Council.
- The application Ref BH2013/03523, dated 14 October 2013, was refused by notice dated 23 December 2013.
- The development proposed is conversion of two existing self-contained apartments and a chiropody surgery into three self-contained apartments.

Decision

1. I dismiss the appeal.

Main Issues

2. These are;

   - The effect of the proposal on the aims of Development Plan policies which seek to control the subdivision of existing units.

   - The effect of the proposal on the provision of community facilities.

Reasons

Subdivision

3. The arguments in this case revolve around the various uses and disposition of spaces in the building. In view of a Certificate of Lawful Use or Development obtained by the appellant in 2013 (Ref; BH2013/01172) the planning use is currently of a self contained flat on the first floor, another to the rear of the ground floor, and the ground floor front room has a lawful use as a chiropody surgery. A previous Certificate issued in 2011 agreed the lawfulness of a proposed conversion of the whole building back to a single dwellinghouse but this was not carried out.

4. It is necessary to look in detail at the wording of Local Plan Policy HO9, entitled *'Residential Conversions and the Retention of Smaller Dwellings'*. The supporting text sets out the contribution that the conversion of larger properties can make towards the provision of a wider range of housing and how it can help to meet the needs of a growing number of smaller households, whilst making best use of land and easing the pressure for the release of greenfield sites. Criterion a) refers to the original floor area needing to be

greater than 115m^2, or having more than 3 bedrooms as originally built, but the appellant relates the reference in footnote 1 to 'original floor area', and in the policy criterion to 'as originally built' to the whole two-storey building.

5. That stance is not agreed with now. The planning position is of the building being in use as two dwellings. Using the appellant's interpretation of the 155m^2 'original floor area' could have the result of repeatedly subdividing large properties that have long ago been subdivided, but which as built had multiple bedrooms and were well over the 115m^2 threshold; that cannot be the intention of the policy and it is considered here that this is not the wording either. A look at the wording of criterion c) shows reference to the proposal not being detrimental to adjoining properties, *including those within the same building*, which appears to reinforce the understanding that the dwelling being referred to in criterion a) is not the building as built, but the planning unit as it exists and as it was originally formed, specifically to exclude later additions, rather than to going back to some point in history when a large single-dwelling house was built. With regard to criterion a), the proposal fails to accord as it is for the subdivision of a dwelling on the first floor that does not satisfy either of the alternatives.

6. Criterion b) seeks one of the units so formed to have a minimum of 2 bedrooms, and so be suitable for family occupation. Taking the Council's approach this is failed also in that neither of the two upper flats would comply. The works to the ground floor would comply as two-bedroom accommodation would be formed, at street level and with access to amenity space, but this is not the conversion of a dwelling into smaller units, rather it is the enlargement of a dwelling by the incorporation of the surgery. It does not therefore come under the remit of Policy HO9 to begin with.

7. The other criteria c) to g) can either be met or are inapplicable. Whilst there has been comment on the possible increase in on-street parking demand, the site is at a corner position with a side road and within easy reach of frequent rail and bus routes, shops and other facilities, outside any controlled parking zone so that it appears reasonable to conclude that criterion e) is met, as stated by the Council. On this main issue it is concluded that on the basis of the present subdivision, the proposal does not accord with the requirements of Policy HO9 to allow further subdivision.

Community Facilities

8. Policy HO20 seeks the retention of community facilities and states that Planning permission will not be granted for development proposals, including changes of use, that involve the loss of community facilities, including, among other things, surgeries, unless it can be demonstrated that the site is not needed, not only for its existing use but also for other types of community use.

9. The surgery is a single room to the front of the existing ground floor flat, but it was clearly unused at the time of the site inspection and the appellant states it has not been in use for some time. Nevertheless, the 2013 Certificate confirmed its lawful use as a surgery that would come within Policy HO20. An owner's decision to not offer the service is not proof of there not being a need, and the existence of chiropody services within a radius stated by the appellant is not proof of there being no other type of community use that could be placed in the building.

10. The Policy wording or the supporting text does not detail how genuine redundancy would be proved, but the text makes clear that the starting point is the retention of existing facilities by resisting proposals for alternative uses or redevelopment which would result in their loss to the community. Clearly if that is only the starting point there is scope for loss. However in this case there is limited information on the scope for another community use, only that the chiropody surgery was unviable. In the absence of that additional justification, the proposed change of use would not accord with Policy HO20 on the retention of community facilities.

Planning Balance and Conclusions

11. An Inspector writing in 2011 (Ref; APP/Q1445/A/11/2146856) did not consider the loss of community facilities, and noted the ground floor flat as having two bedrooms, one of which was in use as a home office or consulting room. That situation has since been confirmed as a lawful use. That Inspector further concluded that although there was at that time a Certificate agreeing the lawfulness of a proposed conversion of the whole building to a single dwellinghouse, because it had not been carried out little weight was attached to it, and any proposal to convert back subsequent to that would have to satisfy policies relevant at the time.

12. This appears a completely correct interpretation of the situation at the time, and were it not for the failings with regard to the loss of community facilities, the present situation could be considered similarly. However, the need to physically convert the building to a single dwelling in order to comply with the precise wording and calculations of Policy HO9 would appear to lose sight of that policy's aim, the provision of a wider range of housing to help meet the needs of a growing number of smaller households. The end result of that roundabout process, unnecessarily wasteful of time and resources, would be to provide a family dwelling eminently suitable for such use with access to a garden, and being on the ground floor, and two smaller units above, suitable for one or two person households. The proposal would further the aim stated in the National Planning Policy Framework of boosting significantly the supply of housing, in an area where there is housing need, in a sustainable location.

13. In the balance, it is the unjustified loss of a lawful community facility that counts against the proposal, and pressing as is the need for housing and the need to bring the residential element back into beneficial use from the part-completed building site seen at the inspection, the loss of community facilities should be justified by more than has been in this appeal. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR