



Appeal Decision

Site visit made on 4 September 2017

by **L Gibbons BA (Hons) MRTPI**

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

Decision date: 2nd October 2017

Appeal Ref: APP/Q1445/W/17/3177342
Unit 6, Crowhurst Road, Brighton BN1 8AF

- 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 Bestway Wholesale Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/05979, dated 3 November 2016, was refused by notice dated 11 May 2017.
 - The development proposed is the retrospective change of use of internal floorspace on first floor from vacant office space to operational residential use (Class C3), new residential unit and the provision of external amenity space (Revised Proposal).
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site has a planning history which includes previous planning applications and an appeal in 2016 which was dismissed. The scheme before me seeks to overcome the concerns of the Council and the previous Inspector. The main issues are:
 - i) Whether the proposed flats would provide suitable accommodation for existing and future occupiers in respect of noise and disturbance, and the quality of the outdoor amenity space to be provided, and;
 - ii) The effect of the proposed development on the Hollingbury Industrial Estate.

Reasons

Living conditions

3. The scheme is for offices to be converted into two flats on the first floor of a cash and carry warehouse. One office has been converted and is currently occupied as a residence. A Noise Assessment was provided with the planning application. This concludes that the internal noise environment for future residents would be acceptable.
4. However, the Council refers to the need to make the assessment on the basis of a different British Standard than that used by the appellant to conduct the noise assessment. This would need to take account of measuring noises that vary in intensity relating specifically to commercial uses. This would be the case due to varying levels of noises from delivery vehicles, machinery and

- noise within the warehouse. The noise assessment does not refer to any detail of movement of forklift trucks outside of service hours, or other potential disturbances within the building such as loud music which was playing at the time of the site visit.
5. In addition, no information was provided on whether there would be a need to keep windows closed. The rooms are laid out in such a way that the windows are on the elevation facing the service and delivery yard, and there is no information provided on alternative sources of ventilation. The potential hours of operation are also particularly long which may affect family members differently. The appeal site is also located close to businesses which may operate over different hours including weekends. Therefore, I am not persuaded that the approach adopted by the appellant is suitable for assessing sound at new dwellings within existing commercial premises or that there would not be a negative effect on occupiers.
 6. The scheme proposes a small outdoor amenity area. This would be located near the southeast corner of the building. Policy HO5 of the Brighton and Hove Local Plan (LP) 2005 does not refer to any specific standard of amenity space. However, it does refer to 'useable' amenity space. The Noise Assessment measured noise levels externally in relation to the amenity area. However, I note that the sensor was placed by the electricity substation potentially interfering with the recordings, and this was some distance from the proposed amenity area. In any event, the recorded noise levels were high. I note there is no objection from adjoining occupiers. However, I consider there may be the potential for complaints arising from the use of the amenity area relating to other business given the nature of some of the adjoining operations which includes a fruit market.
 7. Moreover, the amenity area would be very close to the sprinkler tank and the main engine room for the building. The area is also adjacent to an area of land currently used for storage of pallets. The access to the amenity area would be through a service and delivery area which could give rise to potential conflicts between vehicles and occupiers. No separation between these uses and the access is proposed. The amenity space is proposed to be enclosed with a close boarded fence. However, it is not certain that enclosure of this space would not affect suitable maintenance or emergency access to the tank and engine room.
 8. Overall, I consider that due to the location of the proposed amenity area and the potential for noise and disturbance it would not be a useable or safe area for sitting out and playing.
 9. For the reasons given above, I conclude that the proposed development would not provide satisfactory living conditions for the future and existing occupiers in respect of noise and disturbance and outdoor amenity space. It would be in conflict with Policies SU10, QD27 and HO5 of the LP. These amongst other things seek new development that minimises the impact of noise on the occupiers of proposed buildings, and that planning permission will not be granted where it would cause material nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

Hollingbury Industrial Estate

10. Policy CP3 of the Brighton and Hove City Plan Part One (CP) 2016 amongst other things seeks to ensure that sufficient employment sites are provided, and that premises will be safeguarded. Policy CP3 does allow for mixed use sites although specific sites are referred to, and the list does not include Hollingbury Industrial Estate. Policy CP3 of the CP refers to the support for proposals to upgrade and refurbish premises to suit the needs of modern businesses, and I accept that the proposal is not seeking to replace the existing business.
11. However, Hollingbury Industrial Estate is identified as a primary industrial estate to be protected for business and industrial uses. The explanatory text refers to new uses should not be introduced that would preclude industrial and/or warehousing type uses. To my mind this would include residential uses including ancillary accommodation which would potentially place the estate at risk in terms of its function as a key employment site. This would be through the potential for noise and disturbance complaints from residents.
12. I note that one of the deputy managers commutes for some distance. The appellant refers to the accommodation not being a primary residence although I note that the manager was unable to find suitable and affordable accommodation within the area. The detail submitted with the planning application also confirms that the family are there for the majority of the week. I acknowledge that some businesses such as agriculture and pubs require the need for on-site residential accommodation. The appellant submits that the proposed residential uses are necessary to ensure that the wholesale operation can be managed effectively. However, no further detail was provided to confirm that this would be the case.
13. The appellant suggests that a condition could be attached which would limit the use of the flats to the employees of the business. The suggested condition is not precise as the first part would effectively allow more flexibility for other users of the site to occupy the flats in the future. Moreover, given the level of investment involved in converting the offices and the need for permanent construction, I consider this would make the condition difficult to enforce in the longer term. Whilst the suggested condition may reduce the potential for complaints for the reasons given above I am not satisfied that there would be no adverse effect on current and future residents. In addition, the suggested condition would not overcome my concerns in relation to the proposed amenity area or the long term impact on the functioning of the industrial estate.
14. For the reasons given above, I conclude that the proposed development would be likely to prejudice the future use of the Hollingbury Industrial Estate. It would be in conflict with Policy CP3 of the CP.

Conclusion

15. I accept that the scheme would make use of disused office space and would add to the supply of housing within the local area. The site is located in an area which is close to services and facilities. The scheme would not affect residents in terms of contaminated land and the internal layout of the flats is also acceptable.
16. However, it has not been demonstrated that the scheme would provide satisfactory living conditions for occupiers in respect of noise and disturbance

and outdoor amenity space, and the proposal would have a negative effect on the future use of the Hollingbury Industrial Estate.

17. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR