The Planning Inspectorate

# Appeal Decision

Site visit made on 13 February 2023

**by J Reid BA(Hons) BArch(Hons) RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 February 2023**

**Appeal Ref: APP/Y3805/W/22/3302029**
**6 Windmill Parade, 163-183 Old Shoreham Road, Southwick, Sussex BN42 4QB**

- 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 Gary J Brant and Mr Keith R Harrison of Harrison Brant against the decision of Adur District Council.
- The application Ref AWDM/1927/21, dated 19 October 2021, was refused by notice dated 7 January 2022.
- The development proposed is change of use and conversion of estate agents ground floor office into two x one bedroom flats.

## Decision

1. The appeal is dismissed.

## Main issues

2. The main issues are the effect that the proposed development would have on:
   - The viability of the Local Parade, and
   - the living conditions of the occupiers of the proposed flats, regarding noise and disturbance.

## Reasons

*Viability*

3. The appeal site is within a suburban area and includes a vacant ground floor unit within the shopping parade, which is designated as a Local Parade in the Adur Local Plan 2017 (LP). The Local Parade includes 2 hipped roofed mostly 2 storey terraces of 4 ground floor commercial units with mostly residential uses above between Overhill and Hillside. The appeal unit, which includes a deep more than half width single storey flat roofed back extension, was last occupied by an estate agent. The unit is reached from Lower Drive, which runs roughly parallel to the busy A270 Old Shoreham Road at the front, and from Hillside by the access to its service yard. There is a time restricted parking bay at the front, and parking bays on the opposite side of Lower Drive. So, the site specific circumstances of the units and the parade are suitable for their uses.

4. LP Policy 27 aims to support shopping and other town centre uses in designated local shopping parades but to retain a predominant shopping use at ground floor level. Where a proposal would result in there no longer being a predominant shopping use, this will only be acceptable where it can be demonstrated that retail is no longer a viable use in that unit.

5. The appeal unit is available to let through the agent that previously occupied it. The other 7 ground floor units in the parade are occupied. They include a restaurant, pharmacy, convenience store in 2 adjoining units, 2 hot food takeaways, and an electrical contractor. Shopping is not the predominant use, and the footfall associated with the takeaways is likely to differ from that related to shopping. However, almost all of the other units are occupied for shopping or supporting town centre uses, and they contribute positively to the viability of the parade as a whole. As they are all potentially useful to people living and working in the local area, they support sustainable communities.

6. The appellants may not require the unit for their business, but as the other ground floor units in the parade are occupied, there is little to show that it is no longer viable. There is barely any evidence that the unit has, say, been marketed for sale or rent for retail use or other supporting town centre use at a reasonable price and for a reasonable time without success. So, there is little evidence to show a lack of commercial demand for the unit.

7. The proposed alterations to the unit would erode the existing commercial character in the parade, and the unjustified loss of the appeal premises would be likely to diminish the viability of other ground floor units within the parade. None of the other local developments referred to by the appellants, including numbers 179 to 183 Old Shoreham Road, are within a designated Local Parade, so they provide little support for the scheme.

8. Therefore, I consider that the proposed development would harm the viability of the Local Parade. It would be contrary to LP Policy 27, and the National Planning Policy Framework (Framework).

*Living conditions*

9. The front flat would adjoin the commercial unit at 171 Old Shoreham Road, which is a hot food takeaway. As the bedroom and lounge/kitchen of that flat would adjoin the takeaway, its occupiers would be subject to noise transmission and disturbance related to the takeaway. The patio of the flat at the back would adjoin the rear outshoot at 171, and windows in both flats would open onto it. The mechanical plant and equipment for the takeaway includes a tall flue at the back of the 2 storey terrace, which stops a little above the main roof's eaves. So, in addition to the noise and disturbance that would be reasonably expected from a commercial kitchen operating into the evening, noise from its plant and equipment would also be expected. Noise and disturbance related to the takeaway would be likely to increase in the evenings when the future occupiers of the proposal would be likely to be at home seeking to relax and/or to sleep. However, no acoustic assessment, and no acceptable measures to deal with any harmful acoustic impacts has been put to me. So, I am unable to conclude that the living conditions of the occupiers of the flats would be acceptable.

10. The Council's evidence explains that noise levels from traffic by day and night are high. Even so, there are 2 existing flats above the unit and others close by within the parade. So, I see no reason why measures to attenuate traffic noise could not reasonably be dealt with by condition if the proposal were to be otherwise acceptable. The appellants have explained that the flat roof of the back outshoot is a fire escape route from the door in the back of the first floor flat. Even if the back outshoot roof is used as an outdoor space, measures to

deal with noise transmission from its use could also reasonably be dealt with by condition.

11. Occupiers of the front flat would reasonably expect some noise and disturbance from customers and others visiting and leaving the takeaway next door. As their bedroom would be at the back, they should enjoy greater quiet and less disturbance there. Also, whilst the relationship between both flats is less than ideal, the occupiers of the rear flat would be likely to consider their neighbour's living conditions when using their patio.

12. Thus, I consider that there is insufficient evidence to show that the proposed development would not harm the living conditions of the future occupiers of the proposed development, regarding noise and disturbance from the adjoining commercial premises, which is a hot food takeaway. It would be contrary to LP Policy 15 which aims for development to not have an unacceptable impact on adjacent dwellings and LP Policy 34 which seeks noise assessments in conjunction with proposals. It would also be contrary to the Framework which seeks a high standard of amenity for existing and future users.

*Other matters*

13. The Council cannot demonstrate a 5 year supply of deliverable sites for housing and the shortfall is significant but expected to decrease. The benefits of the proposal would include 2 welcome flats within the built up area, employment during construction and the future occupiers' likely support for local shops and services. However, as the harm to the viability of the Local Parade and to the future occupiers' living conditions would significantly and demonstrably outweigh the benefits, planning permission should not be granted.

**Conclusion**

14. I have found that the proposed development would be contrary to the Development Plan when taken as a whole. The other considerations in this case, including the Framework, do not outweigh that conflict.

15. For the reasons given, the appeal should be dismissed.

*J Reid*

INSPECTOR