Expiry Date - 27/11/2023

Development Control – Delegated Officer Report

Application Number: AWDM/1375/23 **Recommendation – REFUSE**

Site: **31 Oxford Road Worthing West Sussex BN11 1UT**

Proposal: **Retrospective Flexible use of ground floor for Class C3 (Residential) or Class E(a) (c) (e) (g)(i)(ii) with associated external alterations including to shopfront.**

Date of site visit: previous site visit 09.02.22

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings

The application site comprises 31-33 Oxford Road on the corner of Teville Place and Oxford Road.

The ground floor of the building comprises a flower shop to the front/east and residential above. The rear of the ground floor is being used, without planning permission, as a residential unit.

The surrounding area is characterised by various buildings used for residential accommodation and small business with Worthing Station further to the north.

To the west of the site is a business use and opposite the site are rear gardens and a car park belonging to Abbey House.

The site is situated within a key office area and an area identified as susceptible to surface water flooding.

Proposal

The application is for the use of the premises for Class C3 flat or Class E (a) – retail, (c) – financial services, professional services, other services appropriate to a business and service locality; or (e) –medical or health service for visiting members of the public; or (g) (i)(ii) – office, research and development.

The eastern part of the ground floor of the premises is used for a flower shop and this will continue.

The first floor of the premises is not included in this application and is used for two flats.

The applicants agent has indicated that if this proposal is approved the applicant will apply at some stage for the same flexible use for the first floor of the premises.

The ground floor flat is occupied and comprises a one bedroom flat with a lounge/kitchen area, bedroom and en-suite shower room accessed through the living area.

There is a small window in the north elevation which would be replaced with a larger window, close to the main door to light the living and kitchen area and a further window to light a lobby area off the ensuite bathroom. A glazed external door (annotated on the submitted as obscure-glazed) would be provided on the south side of the living room opening onto a small external area (1.3m x 1.6m). The main door from Teville Place, which also provides access to the flats above, would be replaced with a flood door.

The applicants have indicated that:

The applicant purchased 31 – 33 Oxford Road approximately 14 years ago. At that time the ground floor was used for a betting office, which resulted in some conflict with neighbours. Soon after the applicant purchased the premises the betting office became unviable and closed. The applicant opened a flower shop, with an associated internet based flower business which was located at the rear of the shop in the area of the proposed flat. The online flower business changed over the following years and by 2019 the internet side of the business had ceased and the premises became vacant.

The applicant marketed the premises as a fully serviced office suite for in excess of a year at a rental of around £600.00 per month. There were no enquiries whatsoever and so they took the premises off the market.

Following the refusal the applicant left the premises empty with a sign in the window stating it was available for commercial rental. There were no enquiries. Then in early 2022 the applicant was approached by a young man who asked if he could rent the flat. He works next door and was ideally located for both his work and social life. The applicant allowed him to move in and he has lived there ever since. He has advised the applicant that he is very happy in the flat and does not want to move away.

This application seeks to regularise the use of the flat and includes a few changes to the layout of the flat. As with the recent permission at 40 Oxford Road, the applicant is seeking a flexible use so that the future of the premises is secure and can respond to market needs and demands in the area in the long term, whether residential or commercial.

Relevant Planning History:

09/0743/FULL- Proposed conversion of existing first floor office into two self contained flats with bin and cycle store on the ground floor. REFUSED

The proposal represents the unacceptable and unjustified loss of good quality employment floorspace in a sustainable location which would set an undesirable precedent and is premature and prejudicial to the preparation of the Local Development Framework. This would be to the detriment of the local economy. As such it is contrary to Policy RE3 of the South East Plan.

10/0026/FULL-Conversion of first floor office into two self contained flats including new and replacement windows, installation of new entrance door to the flats (north elevation) and provision of bin and cycle store on ground floor.

AWDM/0017/22- Change of use of ground floor office to 1 no. 1 bedroom residential unit with associated alterations.

Refused:

1. The application fails to satisfactorily demonstrate that the existing office floor space is no longer suitable or viable for continued employment use or that the introduction of an alternative use is required to retain a diverse and resilient local economy. The loss of the existing employment use is therefore contrary to policy 4 of the Worthing Core Strategy, policy DM11 of the Submission Draft Worthing Local Plan as modified), the Council's SPD 'Sustainable Economy' and the NPPF.
2. The proposed one bedroom flat by reason of its siting, orientation and fenestration would result in inadequate standard of accommodation for future resident(s). The proposal is therefore contrary to policy 8 of the Worthing Core Strategy, Policy DM1 of the Submission Draft Worthing Local Plan, and the 'Guide for Residential Development' SPDs and the relevant policies of the National Planning Policy Framework”

Consultations:

WSCC Highways

Comments
The plans indicate that there is currently no vehicular access to the site, and that the proposal does not intend to alter this arrangement. A nil car parking provision is proposed for both potential uses. Under the WSCC Car Parking Standards, one car parking space may be provided for the proposal.

Whilst on-street car parking is limited in the immediate vicinity there are comprehensive parking restrictions prohibiting vehicles from parking in places that would be detrimental to highway safety. It is not considered that highway safety would be detrimentally affected through the proposed nil car parking provision. The LHA also acknowledge that the site has operated as an office with the same nil parking provision. The Planning Authority may wish to consider the potential impacts of this development on on-street car parking from an amenity point of view. It is understood that the current arrangement sees the owner of the neighbouring unit residing in the flat.

The plans do not demonstrate any secure and covered cycle parking provision for the dwelling. The LPA may wish to consider securing this via condition, if it considered necessary.

Conclusion
The LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 111), and that there are no transport grounds to resist the proposal.

If the LPA are minded to approve the application, a condition securing cycle parking may be applicable.

Southern Water

Southern Water requires a formal application for any new connection to the public foul and surface water sewer to be made by the applicant or developer.

To make an application visit Southern Water's Get Connected service: developerservices.southernwater.co.uk and please read our New Connections Charging Arrangements documents which are available on our website via the following link: southernwater.co.uk/developing-building/connection-charging-arrangements

The Flood Risk Assessment document indicates surface water flows no greater than existing levels being connected into the public system by implementing small-scale SuDS devices proving betterment of the surface water flows which would be satisfactory to Southern Water.

The supporting documents make reference to drainage using Sustainable Drainage Systems (SuDS).

Under certain circumstances SuDS will be adopted by Southern Water should this be requested by the developer. Where SuDS form part of a continuous sewer system, and are not an isolated end of pipe SuDS component, adoption will be considered if such systems comply with the latest Design and Construction Guidance (Appendix C) and CIRIA guidance available

Where SuDS rely upon facilities which are not adoptable by sewerage undertakers the applicant will need to ensure that arrangements exist for the long-term maintenance of the SuDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.

Thus, where a SuDS scheme is to be implemented, the drainage details submitted to the Local Planning Authority should:

- Specify the responsibilities of each party for the implementation of the SuDS scheme.

- Specify a timetable for implementation.
- Provide a management and maintenance plan for the lifetime of the development. This should include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

Adur and Worthing Councils

EHO (Private Sector Housing)-

The Private Sector Housing team of Adur & Worthing Councils have identified that some aspects of the development may result in hazards that require action under the Housing Act 2004. Typical hazards can include 'inner' rooms (where the only means of escape in the case of fire is through another risk room i.e. bedroom, living room, kitchen, etc.) or where there are inadequate windows or outlook from habitable rooms.

In this case, the bedroom has extremely poor outlook and access to natural light.

Compliance with Building Regulations will not necessarily address the hazards identified and you should contact the Private Sector Housing team to confirm that the layout of the property is acceptable prior to commencing the development in order to avoid the need for any formal intervention or the requirement of retrospective works.

EHO (Public Health):

No adverse comments

Drainage Consultant

Following a review of the submitted information, we request the applicant provides a Flood Risk Assessment for 31 Oxford Road instead of the submitted one which details information for 40 Oxford Road. However, we would also note that when considering climate change the site would be subject to over 900mm of flood water. Even if flood doors were installed, they can only withhold 600mm of flood water without damaging the structural integrity of the building. Therefore, it has not been demonstrated that the site is safe, meaning it is not in accordance with NPPF. We would recommend the objection of this application**.**

Representations: None received

Relevant Planning Policies

National Planning Policy Framework (2023)
National Planning Practice Guidance
'Sustainable Economy' SPD (WBC 2012)
'Space Standards' SPD (WBC 2012)
Guide for Residential Development (SPD)

Worthing Local plan

SP1 (Presumption in Favour of Sustainable Development)
DM1 (Housing Mix)
DM2 (Density)
DM5 (Quality of the Built Environment)
DM11 (Protecting Employment Land)
DM15 (Sustainable Travel and Active Travel)
DM20 (Flood Risk and Sustainable Drainage)
DM22 (Pollution)

Planning Assessment

The Worthing Local Plan was adopted on 28th March 2023. Policy SS1 sets out the Housing supply over the period 2020-2036 and gives a total figure of 3672 (an annual target of 230 dwellings per annum).

Paragraph 74 of the NPPF states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirement. The supply of deliverable sites should include a buffer of 5% to ensure choice and competition in the market for land, or 20% where there has been a significant under delivery over the previous three years.

The Inspectors report at Paragraph 176 states:

"I am satisfied that this is a reasonable assessment of likely deliverable supply. This comfortably exceeds the likely five-year housing land requirement. It is possible that some sites may stall or take longer to start delivering new housing, especially taking into account uncertainties surrounding the outcome of Brexit and COVID-19. However, there is sufficient headroom to be reasonably confident that a five-year supply of deliverable housing land would exist at adoption."

The Inspector was satisfied that the housing requirement represents a reasonable and realistic assessment of the limited capacity of the Borough.

The most recent housing trajectory and 5 year housing land supply for Worthing can be found in the Annual Monitoring Report. Table 9 indicates the Five Year Supply and includes a 20% buffer, which results in a 6.5 year supply of deliverable sites.

The fourth Housing Delivery Test was published in January 2022, and covers the period from 2018/19 - 2020/21 (therefore prior to adoption of the Local Plan). Worthing Borough Council scored 35%. Therefore the presumption in favour of sustainable development applies as the delivery of housing was less than 75% of the housing requirement over the previous three years. An Action Plan will be produced to identify new measures or updates to existing measures that will assist in the improvement of housing delivery.

Policy DM11 identifies Oxford Road and Teville Place as a key office location that should be protected. [The submitted Design and Access Statement is incorrect in stating that the property is not in a protected key office location.] It states that these key employment areas are essential in maintaining a strong and diverse supply of employment sites and premises to meet the needs of the local economy and that only in exceptional circumstances where there is clear and robust evidence that the introduction of alternative uses is required to retain a diverse and resilient local economy will such change be considered.

The SPD 'Sustainable Economy' acknowledges that there may be exceptional circumstances where a site in a protected area may be considered under the principles set out in the SPD to justify the loss of employment use, but in such circumstances the criteria outlined should be 'even more rigorously applied' (paragraph 2.3).

In support of the application:

- The applicant has indicated that the property has been marketed through 'Michael Jones Estate Agent for a period of not less than 12 months and did not receive any offers to buy or lease the accommodation.

- A further period of potential marketing was carried out following the refusal in the form of a notice on the building which also yielded no commercial offers.

- The applicant cites 40 Oxford Road as an example of a property which has flexible accommodation. AWDM/0679/21 provided for flexible accommodation of ground floor for Class C3 (Residential) or Class E(a) (c) (e) (g)(i)(ii) with associated external alterations including to shopfront.

- The Statement suggests a residential use could have been undertaken as permitted development. [This is not the case as external alterations have been carried out and are required to implement the use. The insertion of new/altered external window/door openings to form the accommodation would be contrary to the criteria for the prior approval process which does not allow for external alterations.]

Although it is indicated that the property has been marketed for rent, no evidence of marketing or advertising has been submitted in support of the

current application to substantiate this claim. In effect the proposal for a ‘flexible use’ is considered to be no more than a contrivance in an attempt to overcome the conflict with policy DM11 since the accommodation is now fitted out and occupied as a residential dwelling rendering it unavailable for a commercial use. Moreover, there is doubt that once severed in planning terms from the existing shop premises, whether by itself, a small unit of this size would be commercially viable for the range of Class E uses sought.

Visual Amenity

The application proposes the insertion of two windows and a flood door to replace the existing door. The alterations would not have an adverse impact on the external appearance of the property.

Residential Amenity – Future Occupiers

Although new windows are retrospectively inserted to the building and are further proposed the building continues to be a north facing building with inadequate light to the property which would also render it non-compliant with any prior approval process.

The proposed flat would be approx. 40sqm which would comply with the National Technical space standard for a 1-bedroom, 1-person dwelling unit. The layout of the accommodation creates an ‘inner’ room as highlighted by the Private Sector Housing team. Concerns are also raised about the amount of daylight that would be received to the habitable rooms, and the poor outlook from these rooms facing north directly onto the street. Although a glazed door is shown on the south side opening into the confined ‘courtyard’ this is directly overlooked from the windows and external landing serving flats at 29/29A Oxford Road and is annotated on the proposed plan to be obscure-glazed. The bedroom, in particular, is awkwardly shaped with the window positioned at the end of a narrow gap between an internal partition wall and the bathroom. The overall effect would be cramped, oppressive and gloomy and fail to meet the standard of residential amenity required by the NPPF.

The unit directly adjoins commercial premises on either side of this busy, narrow commercial street. No details have been provided of the sound insulation measures that have been installed to the dividing walls, and there is no approval under the Building Regulations for the dwelling as currently occupied. The bedroom area would rely for ventilation on the window directly fronting Teville Place, located less than 30 metres from the garden and external seating terrace of the nearby Railway Hotel public house. In the absence of an acoustic assessment it is unclear whether a satisfactory internal noise environment would be created, particularly during the late evening and night-time.

No provision for bin or bike storage is shown on the submitted drawings.

The resulting standard of accommodation is considered to be poor, contrary to the NPPF (paragraph 130) which requires that planning decisions create

places that promote health and well-being, with a high standard of amenity for existing and future users.

Residential Amenity – Neighbouring Occupiers

The nearest residential properties are the flats above there would not be an impact on these properties from the proposed conversion of the property.

Highways

The LHA has not raised any objection on the basis that the site is sustainably located with excellent access to public transport and within easy walking distance all the services and facilities of the town centre.

Drainage and flood risk

Policy DM20 of the WLP indicates that a flood risk assessment must be submitted for:

iii) development that would introduce a more vulnerable class on land at increased flood risk in future or subject to other sources of flooding identified by the Strategic Flood Risk Assessment

The site is within flood zone 1 but is located within an area identified as susceptible to surface water flooding.

The requirement for a site-specific FRA is consistent with the NPPF (footnote to paragraph 167) which states:

"A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use."

The applicants have failed to provide a FRA providing only one submitted on behalf of another property in the vicinity.

The applicant have indicated that a flood door would be provided. The drainage engineer has indicated that when considering climate change the site would be subject to over 900mm of flood water and even if the flood door was installed they could only withhold 900mm of floor water without damaging the structural integrity of the building.

The Council's Building Control Officer has also indicated that flooding is a concern with reported complaints from the neighbouring commercial premises that there has been several instances of severe internal flooding since the dwelling unit has been occupied.

Conclusion

Whilst the unmet housing requirements of the Borough are recognised, in the absence of adequate justification or robust evidence to demonstrate that the floor space in question is no longer needed for continued commercial or business use, it is considered that the creation of a poor quality residential dwelling unit in this location which is at risk from flooding would result in very limited benefit and would not outweigh the significant harm that would result from the conflict with the NPPF and adopted Local Plan policies.

Recommendation

REFUSE for the reason:-

1. The application fails to satisfactorily demonstrate that the existing office floor space is no longer suitable or viable for continued employment use or that the introduction of an alternative use is required to retain a diverse and resilient local economy. The loss of the existing employment use is therefore contrary to policy DM11 of the Worthing Local Plan the Council's SPD 'Sustainable Economy' and the NPPF.

2. The proposed one bedroom flat by reason of its siting, orientation and fenestration would result in inadequate standard of accommodation for future resident(s). The proposal is therefore contrary to policy DM1 and DM5 of the Worthing Local Plan, and the 'Guide for Residential Development' SPDs and the relevant policies of the National Planning Policy Framework.

3. The application is not supported by a site-specific flood risk assessment and fails to demonstrate that the existing and future occupants of the proposed dwelling would be safe from flood risk for the lifetime of the development when allowances for climate change are taken into consideration. Moreover, the proposed development fails the Sequential Test in that the application fails to provide justification for the development of this site which although within Flood Zone 1 is at risk of surface water flooding, taking into account the availability of other more suitable small windfall sites of a similar size within the built-up area of Worthing with a lower risk of flooding. The proposed development is therefore contrary, policy DM20 of the Worthing Local Plan and the National Planning Policy Framework

Informative

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a

satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

Further recommendation

As the application is retrospective it is further recommended that Enforcement Action is undertaken to secure the remove of residential occupation of the ground floor of the property within 3 months

Is recommendation contrary to letter(s) of representation? N

Case Officer: Jackie Fox Date: 29.11.23

Authorised by: Jo Morin Date: 29.11.2023