Expiry Date - 29/05/2024

Development Control – Delegated Officer Report

Application Number: AWDM/0429/24 **Recommendation – REFUSE**

Site: **33 Oxford Road Worthing West Sussex**

Proposal: **Retrospective Change of use of ground floor from Class E (shop/office) to 1no. residential dwelling (Class C3) with associated changes to replacement doors and windows to North Elevation.**

Date of site visit: 09.02.22 / 16.07.24

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 retrospective change of use of the premises for one residential dwelling (Class C3) with associated changes to replacement doors and windows to North and south elevations.

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 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.

As indicated by the applicant , the differences between the current application and the original one include:

- The introduction of a full height clear glazed door in the southern elevation of the living room. It leads into a secure courtyard and is ideal for leaving open. It provides a dual aspect to the flat.
- The provision of a glazed door and high level glazed panels between the living room and bedroom. This will increase the level of natural daylight and sunlight within the bedroom.
- The provision of secure cycle and bin storage.
- The proposal is for a flexible use to enable the western part of the ground floor to be used for either residential of commercial uses, depending on market demand. This will make full use of the building; secure its viable use and maintenance in the long-term, ensure commercial or domestic rate income for the Council. Such funds to be spent on local services and facilities.
- There is a significant need for affordable small homes for single people in Worthing.
- Worthing does not have sufficient land to meet its identified housing need. Whilst the newly adopted targets have been set at a very low level to reflect this, it is still of critical importance that new housing proposals are proactively encouraged.

The difference between the last refused scheme and the current proposal is that a full review has been undertaken along with a site-specific FRA.

The applicants have indicated that:

I purchased the above premises 15 years ago. At that time it was used for part of a betting office. When the betting office closed down for financial reasons, I marketed the premises with Jones and Co (Commercial agents for 12 months. They did eventually secure a tenant in 2013 but the tenant left after just under one year stating that the premises were too small for a business and lacking customer parking. When this happened I asked around and put up To-let signs in the window but was unable to secure any new tenants. So in 2014 I started to use the space myself in conjunction with my flower shop business, just to make use of the space.

In particular, I used it for the on-line side of the business. Following changes in the on-line flower business, my business contracted and the premises were simply unused again. Since then I have been unable to secure a commercial tenant. Initially, I marketed myself as word of mouth and on-site advertising can be successful in this area. I had no success at all and so in 2021 I placed the premises with Jones and company again. They marketed the premises between May and December with no success and were not optimistic about securing a tenant. Since then I have placed my own advertising details in the window and in my shop for much of the time and advised neighbours and other businesses of its availability. The only interest I have received since 2019 has been from the current residential occupier who asked to rent the premises for use as a flat. Since my current tenant moved into the premises I have continued to display advertising details in my shop and made the availability of the premises known locally. I have simply had no interest in it for commercial use. There does however remain interest in the premises for residential use.*

To put things into perspective over the past 12 years the premises have only been used for commercial purposes for 6 years and five of those years was by me, when I was simply making use of spare space. During this period the premises have been commercially marketed twice, they have been advertised by me on site and I have made the availability of the premises is common knowledge locally.

I am happy to meet any local need with the premises, whether commercial or residential as it is a waste and not helpful for anyone for the premises to sit empty and decaying. Hence, my proposal is to be able to offer a broad range of commercial and residential uses to help meet local need and demand.

The current tenant has indicated:

I am very happy with the size, layout and outlook of the flat and with its location. The flat is affordable, located on the ground floor and extremely convenient for me. Not only is it close to Worthing station and local bus routes, it is within walking distance of my place of work. I work next door at Select Electrical. The flat is also within very easy walking distance of local shops and services. I do not want a garden as I have no need or desire to have one. I am an active person and like to be out and meeting up with friends and regularly go to the beach for water sports. If I had a yearning to sit in a grassed area I would use Victoria Park, which is just around the corner.

This application seeks to regularise the use of the flat and seeks to apply for a flexible use for other uses within class E.

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”

AWDM/1375/23- 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- 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 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

Consultations:

WSCC Highways

This application seeks the retrospective change of use of ground floor from Class E to Class C3 to provide one residential dwelling, with associated changes. The site is located on Oxford Road, an unclassified road subject to a speed restriction of 30 mph.

WSCC in its role as Local Highway Authority (LHA) previously provided consultation advice for this site for similar application AWDM/1375/23, raising no highway safety concerns. The Local Planning Authority (LPA) refused the application on grounds unrelated to highways.

For the current application, the proposals appear not too dissimilar from that of the previously refused application at this site. There is no vehicular access point associated with this site. The proposed change of use would not be anticipated to give rise to a material intensification of movements to or from the site.
No vehicular parking is proposed – as such, vehicular parking would have to be accommodated on-street or within nearby paid-for provision. The LHA would not anticipate that this would lead to a highway safety concern or parking capacity issue in this location, but the LPA may wish to consider the potential impacts on on-street parking from an amenity point of view.

Regarding cycles, the plans demonstrate existing secure cycle parking provision for use by the proposed dwelling.

In summary, 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 115), and that there are no transport grounds to resist the proposal.

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.

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)-

No Objection but please could the following informative be placed on any planning permission that may be granted

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.) The risk can be mitigated by ensuring that the bedroom windows meet fire escape window requirements

EHO (Public Health):

No Objections

Drainage Consultant

The applicant is applying for the retrospective change of use of ground floor from Class E (shop/office) to 1no. residential dwelling (Class C3) with associated changes to replacement doors and windows to north elevation.

Following a review of the submitted information, we have noted the following issues that prevent the approval of the application:
I **Safe access and egress** – As stated in paragraph 44 of the Planning Practice Guide (PPG) for flood risk and coastal change, ‘if the probability of inundation is high, safe access and escape should be maintained for the lifetime of the development’. Furthermore, paragraph 47 of the PPG states ‘Wherever possible, safe access routes should be provided that are located above design flood levels and which avoid flow paths. Where this is not possible, limited depths of flooding may be acceptable, provided that the proposed access is designed with appropriate signage etc. to make it safe. The acceptable flood depth for safe access will vary depending on flood velocities and the risk of debris within the flood water. Even low levels of flooding can pose a risk to people in situ (because of, for example, the presence of unseen hazards and contaminants in floodwater, or the risk that people remaining may require medical attention)’. Currently, it is suggested

that the residents of the proposed property will remain inside the building in the event of a flood, with the property providing safe refuge, however this is not acceptable as it does not provide a safe access route away from the property.
II. Evacuation plan – The currently provided evacuation plan is insufficient. The applicant should provide maps that demonstrate the evacuation route residents should take in the flow paths and be above design flood levels.
III.Flood depths – As detailed in the submitted Flood Risk Assessment, the proposed development is at risk of flooding up to depths of 1.2m, which is extremely dangerous and poses a threat to life.
IV.Resistance and resilience – Further resistance and resilience measures should be utilised to demonstrate that the change of use is safe for its lifetime. Currently flood gates/doors are utilised, however these are only effective for flood depths of up to 0.6m, meaning it is insufficient for the level of risk posed to the site.

We would recommend the objection of the application on the above grounds.

Reason
To prevent flooding in accordance with National Planning Policy Framework paragraphs 165-175 by ensuring the satisfactory management of local flood risk, surface water flow paths, storage, and disposal of surface water from the site in a range of rainfall events and ensuring the SuDS proposed operates as designed for the lifetime of the development.

Representations: None received

Relevant Planning Policies

Worthing Local Plan 2020-2036 (WBC 2023): Policies:
SP1 (Presumption in Favour of Sustainable Development)
SS1 (Spatial Strategy)
DM1 (Housing Mix)
DM2 (Housing Density)
DM5 (Quality of the Built Environment)
DM15 (Sustainable Transport and Active Travel)
DM16 (Sustainable Design)
DM17 (Energy)
DM20 (Flood Risk and Sustainable Drainage)
DM22 (Pollution)

National Planning Policy Framework (DLUHC 2023)
National Planning Practice Guidance
SPD ‘Space Standards’ (WBC 2012)
SDP ‘A Guide to Residential Development’ (WBC 2013)
CIL Charging Schedule (Aug 2021)

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 76 of the NPPF states that local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision-making purposes where:

a) The adopted plan is less than 5 years old; and
b) That adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.

Paragraph 77 goes on to state that where there has been a significant under delivery of housing over the previous three years, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the Plan period).

The most recent housing trajectory and 5 year housing land supply for Worthing can be found in the Annual Monitoring Report 2022-23. Table 9 indicates the Five Year Supply measured against the adopted WLP annual target of 230 dwellings plus a 20% buffer, and demonstrates a 7 year supply of deliverable sites.

To maintain the supply of housing paragraph 79 of the NPPF requires local planning authorities to monitor progress in building out sites with planning permission. Where the Housing Delivery test indicates delivery has fallen below 75% of the local planning authorities housing requirement over the previous three years, the presumption in favour of sustainable development applies, in addition to the requirement for an Action plan and 20% buffer.

The latest Housing Delivery Test was published in December 2023 and Worthing Borough Council scored 33%. 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.

Policy DM11 identifies Oxford Road and Teville Place as a key office location that should be protected. 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.

In undertaking any assessment regard will be had to the following factors:

i) robust evidence setting out the importance of the use to the future of the local economy;
ii) a demonstration that the introduction of the proposed use would not negatively impact on the functioning of the key employment area or the local economy as a whole;

iii) evidence that the loss of the existing use would not negatively impact the local economy and;.
iv) evidence of alternative sites outside of the key employment areas have been considered and that no suitable sites are available.

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 for recent marketing a letter has been provided by Justice & Co commercial property specials which indicates:

Since we commenced marketing in December 2023 we have carried out the following:

Internet

Details with photographs have been uploaded to our website (www.justiceandco.co.uk) and to such national property portals as Rightmove, On The Market, Zoopla, EG Property Link, CoStar and Estate Agents Clearing House (EACH)

Particulars

Full colour with photo particulars have been sent and handed out to all interested parties. These particulars can also be downloaded via the aforementioned websites.

E-Mail Shot

Particulars have been mailed out via a third party provider to:

- *Sussex & Surrey Commercial Agents*
- *London Commercial Agents*
- *Applicants*
- *Existing Occupiers within a 0.25 mile radius*

Boards

Since the beginning of April 2024 a 4x3 marketing board has also been erected on the property advertising the space available.

Summary

Although brief in nature I hope the above provides you with a clear picture on how we have marketed your property so far and I am only too sorry that we haven't yet found a commercial occupier for this space.

I would be more than happy to discuss this matter in more depth with you either in person or via the phone and look forward to hearing from you in due course.

The supporting information also indicates that the property has been marketed previously that a different agent

Although it is indicated that the property has been marketed for rent and there is a board up on site, the property is not on Justice and Co's website or on zoopla. A request for further marketing has not been received. The indication that the proposal is 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, a small unit of this size would be commercially viable for the range of Class E uses indicated.

The information submitted to address policy DM11 is considered to be insufficient and does not address the policy requirements.

Visual Amenity

The application proposes the insertion of two windows and a flood door to replace the existing doors. 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 and lack of privacy 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. This courtyard to the rear is also enclosed by existing courtyard garden and boundary treatment for an existing flat as well as being a parking area. 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 evidence of 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.

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 provided a FRA.

The applicants consultant indicates that the main issues concerning the change of use for the site to new residential unit is the perceived depth of surface water flooding causing safety concerns and danger to persons when asleep in bedrooms for conversion will, therefore, have a negligible impact on the surface water run-off from the site.

They suggest that historically, no flood depths have reached depths of 900mm to 1200mm in this area and that the Environment Agencys maps have recorded a surface water flood scenario caused from blockage and human error

They indicate that to prevent the ingress of floodwaters during an extreme rainfall event, it is recommended that demountable flood barriers are installed at the front entrances, to a height of 0.6m. All door ways to the florist shop and new residential apartment can be fitted with frames to accept flood gates where needed. The gates can be stored appropriately on site. The building will also be designed with flood resilience materials and finishes to aid durability and cleaning should flood water occur.

In relation to flooding event they suggest that safe refuge can be offered by:-
a) Access to first floor
b) Access to Oxford Road towards the Railway station
It is considered that in the event of a flood warning being issued all residents and employees in the commercial units can reasonably find safe refuge.

The council's drainage consultants have reviewed the information as specified above and have indicated that there is not a safe access route away from the property, the evacuation plan is insufficient and egress and further resistance and resilience measures should be utilised to demonstrate that the change of use is safe for its lifetime.

The request for further information in this respect has not been provided.

The Council's Building Control Officer have previously indicated that flooding is a concern with reported complaints from the neighbouring commercial premises that there have 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 without safe refuge 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 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 for a more vulnerable use 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 removal of residential occupation of the ground floor of the property

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

Case Officer: Jackie Fox Date: 17.07.24

Authorised by: Louise Prew Date: 23/07/2024