Appeal Decision

Inquiry held on 7,8 October 2008
Site visit made on 8 October 2008

by David Murray BA (Hons) DMS MRTPI

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

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Decision date:
7 November 2008

Appeal Ref: APP/Y3805/A/08/2070137
East part of South Wharf, Harbour Way, Shoreham-by-Sea.

- 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 Bovis Homes Ltd (South East Region) against the decision of Adur District Council.
- The application Ref. ADC/0399/07, dated 29 June 2007, was refused by notice dated 6 September 2007.
- The development proposed is the change of use of part of the existing commercial premises to retain four office suites (on the ground floor) and form 8 two bed apartments on the upper floors and erect new bin and cycle store.

Procedural matter

1. The retention of the ground floor units in class B1 office use within the existing building was included in the description of the development proposed even though this use is already permitted by virtue of the permission granted in 2002 under ref. SU/204/02 which was implemented in part and is extant. For the sake of completeness and clarity, I have considered the appeal proposal as submitted.

Decision

2. I allow the appeal, and grant planning permission for the change of use of part of the existing commercial premises to retain four office suites (on the ground floor) and form 8 two bed apartments on the upper floors and erect new bin and cycle store at East part of South Wharf, Harbour Way, Shoreham-by-Sea, in accordance with the terms of the application, Ref. ADC/0399/07, dated 6 September 2007 and the plans submitted with it, subject to the following conditions set out in the attached Schedule.

Main issues

3. the main issues in the appeal are:-

   a) Whether the proposed conversion to residential apartments would be contrary to any provision within the development plan in favour of the retention of employment uses on the site as part of a mixed development and, if it is, whether there is a lack of demand for the permitted office units which justifies conversion to residential use.

   b) Whether the occupants of the proposed apartments, their property and the access route to the site would be subject to an unacceptable flood risk, contrary to local and national planning guidance.

Reasons

Retention of employment uses and the Development Plan

4. The building on the site has planning permission for use as B1 office suites on three floors with a total floor area of about 720 sq. m. The proposal is to retain offices on the ground floor and convert the first and second floors to 8 two-bed apartments. The first issue is whether there is a presumption in the development plan in favour of the retention of the employment uses and, if there is, whether there is a lack of demand for office uses which outweighs this.

5. The Council's first reason for refusal of planning permission in the decision notice of the 6 September makes reference to policy E1 of the Adur Development Plan Submission Core Strategy (as well as policies NE1 and NE5 and 6 in the approved West Sussex Structure Plan). However, the Core Strategy was withdrawn by the Council later in September 2007. The current Development Plan in relation to the site therefore comprises Regional Planning Guidance 9 (RPG9), the saved policies in the West Sussex Structure Plan (until superseded by the South East Plan), and the Adur District Local Plan (1996 - 2006).

6. Dealing with the local tier of policy first, the Local Plan includes the site within an area allocated for business, industry and warehousing and the related policy AE 8 indicates that where the port-related use is impractical, permanent development unrelated to the commercial port will be permitted. The Council accept that the site is no longer suited to port-related activity. In the Structure Plan, policy NE1 sets out the strategic level for employment (and housing) provision in the County during the period 2001 -2016. The Council's Annual Monitoring Report 2007 indicates that the trajectory of employment provision is generally on track and advises that the allocation of development for the remaining period can reasonably be programmed through the Local Development Framework. Structure Plan Policy NE5 is a permissive policy which generally supports the provision of employment development in acceptable locations, and policy NE6 generally supports the regeneration of the coastal area including Shoreham. Finally at the regional level, Regional Planning Guidance 9 (RPG9) generally supports employment development in sustainable locations and economic diversity.

7. The planning history of the site and the surrounding area is also a material consideration and it is clear that the Council have sought to retain a significant proportion of employment use on the site as part of a mixed use development. The Council's stance in favour of the retention of the level of B1 use previously approved amounts to an informal policy. However, it is also clear that the decisions on individual planning applications and the proposals of the non-statutory plan Shoreham Maritime (1999) have sought to encourage residential development as part of the wider regeneration of the area around the appeal site. This has resulted in the appeal site being surrounded by residential development on three of its four sides.

8. If there is an insufficient supply of employment land and an over-provision of housing, this may add weight to the Council's stance in favour of the retention

of the building in Class B1 use. However, it appears to me from the Councils' most recent annual monitoring report that the trajectory for the development of employment land is generally on track and includes a sectoral shift towards office space. Further, although the appellants argue that a five year supply of deliverable housing sites is not met at the moment, and that the additional presumption in favour of development set out in paragraph 71 of Planning Policy Statement 3 - Housing (PPS3) applies, I have not been able to reach a firm conclusion on the housing overview, because of the absence of up-to-date and robust evidence. I have not been able to make a judgement on the likelihood of individual sites coming forward on an ad hoc basis, as suggested by the Council. In my view, the strategic provision of employment and housing sites, at a time of flux pending the production of the Council's Core Strategy and the adoption of the South East Plan, neither supports nor hinders a case for the previously approved level of office provision on the site.

9. There is much support in favour of mixed use development in government advice. Planning Policy Statement 1 - Delivering Sustainable Development (PPS1) generally encourages the more efficient use of land through higher densities, mixed use development and the use of suitably located previously developed land and buildings. However, Planning Policy Statement 3 - Housing (PPS3) also encourages Councils to consider whether sites allocated for industrial or commercial use would be more appropriately allocated for housing development. The recently published Consultation Paper- Planning Policy Statement 4 - Planning for Sustainable Economic Development (PPS4) (2008) highlights the need to retain and develop facilities for economic growth, productivity and employment. However, the Consultation Paper also highlights the need for flexibility in planning policies to respond to economic, social and environmental changes. Housing development is also recognised as an element of economic development.

10. It appears to me that the redevelopment of the land at Shoreham Beach over the last 10 years to a mixed development of housing and business use has been consistent with emerging government advice rather than local policy. This has resulted in a form of development on the South Wharf site where residential use prevails. The proposal, if implemented, would further reduce the proportion of business use on the site to only about 240 sq. m floor area, but would still result in a mixed use. While some general policies in the development plan and government advice encourage employment use and mixed use development, I do not consider that there is an over-riding policy presumption that the degree of employment related use previously permitted on the appeal site must be retained. Accordingly, I conclude that the proposal would not be in conflict with the provisions of the development plan.

11. Given this conclusion, I do not need to consider the second part of the issue in respect of whether any lack of current demand for B.1 office space outweighs the development plan. I have also noted the letter of representation from a company who expressed interested in locating to one of the office units within South Wharf House but did not pursue it as the premises were not fitted out. However, on the evidence at the Inquiry, there is no demonstrable current lack of other sites for B1 employment uses sites around Shoreham in equally sustainable locations. This adds weight to my conclusion that there is inadequate reason to withhold permission for a conversion of the majority of

the premises to residential use. There would still be about 240 sq. m of B1 space within the building which could accommodate some local demand.

Risk of Flooding

12. The site lies on a peninsula of land with Shoreham Beach and the open sea to the south and the River Adur and Shoreham Harbour to the north. The river is tidal in the vicinity of the site. The appellants and the Council agree that in Shoreham Harbour the 1 in 200 year surge tide level would have reached a height of 3.90m (all figures above ordnance datum (AOD)) in the year 2000. But with the effects of climate change, this level is predicted to rise to 4.50m at 2060 and 5.10m at 2115. The finished floor level of the ground floor units to be retained as offices in South Wharf House is 5.20m. The access to the site and the Shoreham Beach area in general is from a single point of access from the A259 and past Beach Green. The lowest level of the road along Beach Green is 1.9m rising to about 4.7m in Harbour Way next to the appeal site.

13. This means that in the event of a 1 in 200 year surge tide occurring today, the eastern end of Shoreham Beach would probably be flooded up to a depth of about 2m and vehicular access to the peninsula would not be possible. The appeal site would not be flooded but would be isolated from the 'mainland' for a period. This situation is predicted to grow worse in future years whereby in 2060 a tidal surge could result in the access road at Beech Green being underwater to a depth of about 2.6m and 3.2m in 2115. However, even at that time the ground floor B.1 units on the site would not be flooded and the proposed residential units would be at least on the floor above.

14. The increased risk from tidal flooding on the Adur estuary has been recognised by the Environment Agency. The Adur Tidal Walls Project is a scheme being considered by the Agency which, subject to consultation and funding, generally seeks to raise the existing sea defence walls or construct new walls around the estuary to alleviate flooding at a time of tidal surge.

15. Given this background, the appeal scheme needs to be considered in relation to the guidance in Planning Policy Statement 25 - Development and Flood Risk (PPS 25). (The PPS is more up to date than policy AP3 in the Local Plan.) In terms of the probability of flooding, the site lies in Zone 3a – High Probability – where there is a presumption against vulnerable uses being located there. The proposed residential apartments would be more vulnerable than the approved B.1 uses as residents would tend to be asleep in the building overnight. Nevertheless the specific flood risk issues raised in a Flood Risk Assessment (FRA) need to be assessed.

16. From the FRA (as amended by agreed data included in the Statement of Common Ground) the appellants submit that the land around the site itself will not flood until about 2081 when the adjacent river walls are predicted to be over-topped by a surge tide (if not improved). Further it is not until about 2107 that Harbour Way would be flooded to a depth of more than 0.25m and this would still enable the occupiers of the apartments to be able to gain access to dry land on the southern edge of the Beach. The appellants argue that this would result in a safe access for apartment users being provided for the lifetime of the development. Residents would also be safe staying in their

apartments well above any tide level, which reflects current government flood advice to the public.

17. In considering this issue, it is also reasonable to consider the frequency and extent of the flood risk. Although the occupiers of the apartments would not be subject to flooding in their actual homes, they would be cut off from the 'mainland' for the period of the surge tide. The main road to Shoreham, although not the pedestrian bridge to the town centre, would be cut off for periods while the tide surged and then went out. This is estimated to last for about two hours and is reasonably predictable. Emergency planning authorities could therefore plan for the occurrence and alert people to the danger. However, if the tidal walls were overtopped towards the end of the life span of the development – post 2100, the degree of tide water trapped behind the defences in the vicinity of Shoreham Green could take days to drop to an extent where vehicles could access the A259. I consider that this would result in a significant disruption to movement, both in emergencies and day to day living. The ability of residents to access higher dry land around Old Fort Road and the shingle beach for short periods does not overcome this problem as there are few facilities there for shelter and care. In my judgement, the isolation of the site from the 'mainland' during tidal flooding in the long term amounts to an unsatisfactory and unsafe access to the development. This would be contrary to the aims and objectives of PPS 25.

18. However, I also have to balance this with the fact that a similar disruption would arise to the permitted B.1 uses, even through the occupiers would not stay over-night, and the development should not be considered in isolation with its surroundings. The proposal would involve the formation of 8 apartments whereas over 4,000 households already exist on the peninsula of Shoreham Beach and would be subject to the same disruptions caused by tidal flooding. Further, the Secretary of State's proposed modifications to the South East Plan put forward a proposal for 10,000 new dwellings by 2026 in the broad location of Shoreham Harbour. The area to be developed is not defined but, in my view, such development is likely to be faced with similar issues of tidal flooding on the River Adur around the harbour.

19. While the implementation of the raising of tidal walls is not guaranteed, on the basis of the opinions of the appellants and the Environment Agency's witnesses, it appears to me that there is a reasonable likelihood of the scheme progressing given the strategic pressure for development in the area and the recognised high benefits in relation to the costs of the scheme. Its implementation before about 2020 would alleviate the flood risk associated with the access to the Shoreham Beach area in general and therefore to the appeal site. On balance, I consider that the flood risk effects for the site and the access route currently predicted in the long term are unlikely to arise in practice.

Conclusions

20. Although the Council has sought to retain a material degree of employment use as part of the mixed use redevelopment of the area around the appeal site over a number of years, there is no specific requirement in the development plan which requires the retention of the previously approved amount of B.1 floorspace as opposed to the apartments proposed. Further, although the

residents of the apartments on the upper floors of the building would suffer a risk from tidal flooding in the long term in that safe access to the site could not always be assured, there is a reasonable expectation that the flood risk will be alleviated before becoming a significant problem.

21. I have considered the revised set of conditions suggested by the Council and agreed by the appellants other than the one then numbered 10. I agree that the conditions are necessary in order to ensure the proper development of the site and to ensure that, if the permission is implemented, the new occupiers of the apartments do not suffer noise or disturbance from the subsequent fitting out of the offices or by the installation of air conditioning. I have also imposed a condition requiring details of an emergency flood risk management and rescue plan in the terms as recommended by the Environment Agency.

22. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The residential units hereby approved shall not be occupied until the fitting out of the office units comprising ceilings, floors and walls and toilets have been carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

3) The building shall not be occupied until the car parking and covered cycle spaces shown on drawing SHR2/100 date stamped 2 July 2008 have been provided. The areas of land so provided shall not thereafter be used for any purpose other than for the parking of vehicles and cycles incidental to the use of the building.

4) No deliveries to the offices shall take place other than between the hours of 0730 and 1830 Monday to Friday and 0800 and 1300 on Saturdays (with no deliveries on Sundays or public holidays) unless otherwise agreed in writing by the Local Planning Authority.

5) The office units shall only be used for purposes within Class B.1 (a) of the Town and Country Planning (Use Classes) Order 2005 (or any provision equivalent to that Class in the Statutory Instrument revoking and re-enacting that Order with or without modification).

6) Prior to the installation of extraction or other air handling plant within or outside the building, details of the plant and machinery (including details of mounting and noise attenuation measures) shall be submitted to and approved in writing by the Local Planning Authority and shall be only be installed in accordance with the approved details and not operated until the noise attenuation measures have been completed and retained thereafter.

7) No development approved by this permission shall commence until details of an emergency flood risk management and rescue plan, including a timescale for its implementation and review, have been submitted to and approved in writing by the Local Planning Authority.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Richard Turney	Of Counsel, Landmark Chambers, 180 Fleet Street, London, EC4A 2HG.
Instructed by	Adur District Council.
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Peter Barnett, BA (Hons), Dip TP, MRTPI.	Principal Planning Officer, Adur District Council, Civic Centre, ham Road, Shoreham, West Sussex, BN43 6PR.
Philip Hailey, BSc.	Development Control Technical Specialist, Environment Agency, West Sussex.

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Instructed by	Boyer Planning Limited..
He called	
David Lander, Cert TP, MRTPI.	Managing Director, Boyer Planning Limited, Groveland House, Church Road, Windlesham, Surrey, GU20 6BT.
Richard Allitt, B.Sc., MICE, C.Eng., C.Env.	Managing Director, Richard Allitt Associates, Suite 3, Forge Offices, Cuckfield Road, Staplefield, Haywards Heath, West Sussex, RH17 6ET.
Christopher Broome, BSc, MRICS	Associate Partner, Cluttons, Portman House, 2 Portman Street, London, W1H 6DU.

DOCUMENTS SUBMITTED AT THE IQUIIRY

Documents submitted for the Appellants:

1 Extract of Local Plan re policy AP3.
2 Summary of Bus Services Timetable.
3 Details of Ropetackle development in Shoreham
4 Extract from Search Results on Clutton's Website
5 Extract from SFRA Volume IV- Jan 08.
6 Extract from Rivers Arun to Adur draft flood and erosion management strategy – summary document.

7 Copy of letter to Council dated 15 August 2007 and attachment.

Documents submitted for the Council

8 Council's letters of notification.
9 Revised list of suggested conditions