



Appeal Decisions

Site visit made on 17 May 2010

by **A J Bingham** TD Dipl Arch ARIBA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 June 2010

Appeal A Ref: APP/Q1445/E/09/2118796

12 St George's Place, Brighton, East Sussex BN1 4GB

- The appeal is made under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr R Teesdale against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/00857, dated 9 April 2009, was refused by notice dated 15 June 2009.
- The works proposed are: "*Change of use of redundant former Council office building to provide 5 residential flats*".

Summary of decision: the appeal is allowed and listed building consent is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/Q1445/A/09/2118794

12 St George's Place, Brighton, East Sussex BN1 4GB

- 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 R Teesdale against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/00856, dated 9 April 2009, was refused by notice dated 12 June 2009.
- The development proposed is: "*Change of use of redundant former Council office building to provide 5 residential flats*".

Summary of decision: the appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C Ref: APP/Q1445/A/09/2118798

12 St George's Place, Brighton, East Sussex BN1 4GB

- 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 R Teesdale against the decision of Brighton & Hove City Council.
- The application Ref: BH2009/01977, dated 14 August 2009, was refused by notice dated 2 November 2009.
- The development proposed is: "*Change of use of vacant offices from B1 to D1*".

Summary of decision: the appeal is dismissed.

Procedural matter

1. The application for listed building consent proposes a change of use of the appeal building, but a change of use amounts to development. Development is not a matter pertinent to an application for listed building consent which relates only to works to a listed building. In realisation of this the Council's decision
-

notice describes the application as "*Internal and external alterations in connection with change of use from offices B1 to 5 self contained flats*". I accept that this is a proper description of the appeal proposal and propose to determine the appeal on this basis.

Appeal A

Main issues

2. The matter of the submission of the application for listed building consent denotes that the building, the subject of the appeal, is included in the Statutory List of Buildings of Special Architectural or Historic Interest. In the light of this, and having regard to the provisions of Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the first main issue on which a decision on this appeal turns is whether or not the proposed works would preserve both the appearance and character of this listed building.
3. The subject building lies in the Valley Gardens Conservation Area but the Council's single reason for refusing the application makes no mention of any impact the proposed works might have on the conservation area. However, by virtue of Section 72(1) of the aforementioned Act this is a matter I am obliged to consider. This gives rise to the second main issue which is whether or not the proposed works would preserve the character of the conservation area.

Reasons for the decision

Consideration of the first main issue

4. For completeness I record that the premises, the subject of the appeal, comprise an early 19th century mid-terrace building. Including a semi-basement this building provides accommodation on 5 floors. The bowed stuccoed and painted façade, built to a shallow segmental profile, rises through all 5 floor levels.
5. The Council's reason for refusal alludes to harm the proposed works would cause to this listed building, intimating that the application contains insufficient information to demonstrate that no harm would be caused, with the application also deficient in its failure to address the policy requirement to reinstate original features of the building. Reference to these matters is made in the Council Officer's report, particularly in the section recording the internal consultation on conservation and design matters.
6. It seems to me that although the reason for refusal is not inaccurate the underlying principle behind the refusal is faulted. This is because the Council has the ability to request any information it requires in order to determine the application. It appears that this was not done. Moreover, the Council is empowered to impose conditions on the grant of listed building consent to require later submission of details of works for its approval if it appears that such works could be appropriately carried out. It is apposite to construe Circular 11/95 "*The Use of Conditions in Planning Permissions*" as applicable to listed building consents. Accordingly, rather than refusal of the application, it appears that the Council did not consider the opportunity of approving the application subject to suitable conditions as expounded in paragraph 10 of this circular.

7. It is apt to consider the conservation and design issues in the Officer's report in the light of the foregoing criticisms of the Council's refusal. It is also pertinent to mention that certain of these issues appear to stem from injurious alterations made to this listed building by the Council, ostensibly without the grant of listed building consent, when it was owned and occupied by that authority. The Council recognises that some past alterations are inappropriate, and that a change of use of the building or a programme of refurbishment would present the opportunity to reverse certain of the inappropriate alterations.
8. I concur with the Council Officer's opinion that there is no objection to the principle of the change of use leading to the proposed works, but insofar as the Officer prefers retention of the building in office use, as it would result in less intrusive works, I point out that that is not the subject matter of the application. The Council objects to the proposed removal of the basement staircase, arguing that it could be retained if the basement and first floor were combined to form a maisonette. I accept that retention of the staircase would preserve the original planform of the building. However, the staircase is located in a ground floor under-stair cupboard and is of basic form and construction. It is not a feature of architectural or historic merit that warrants retention for the contribution it makes to the integrity of the listed building. I find no reason to oppose the removal of this staircase.
9. I agree with the Officer recommendation that removal of the modern partition from the ground floor front room would advantageously restore that room to its former proportions. Compliance with that recommendation would necessitate replanning the layout of the ground floor flat and as such does not form part of the application. Despite the advantage that would result I am not convinced of the necessity for this work. Accordingly, I do not find that the Officer's criticism justifies refusal of the application. This is a matter best dealt with by means of later negotiation between the principal parties to the appeal.
10. The Council Officer also criticises the absence of detail regarding: proposed service pipe and ventilation duct runs; the extent of original interior features; and the means of revealing the original arched openings in partitions at ground and first floor levels. I consider that all these matters, together with the reinstatement of an existing modern sash window on the rear elevation of the main structure with a sash window to match the original windows, and reinstatement of glazing bars in the building's façade at ground floor level could all suitably be controlled by means of planning conditions.
11. Certain of the planning conditions suggested by the Council for imposition on the grant of listed building consent in the event of the appeal being allowed would serve this purpose, but others are merely informatives or unnecessary as they relate to enabling works which are not authorised by the consent granted herewith and would amount to an offence in law if implemented outside the terms of the listed building consent. I therefore intend to impose certain of the conditions suggested by the Council redrafted as I consider necessary together with additional conditions required to control other matters referred to above, and a condition requiring submission of a photographic survey as mentioned in the Council's representations.

12. Having found removal of the basement staircase acceptable and recognising the controls available by the imposition of planning conditions I conclude that the Council's refusal is unfounded. Accordingly, with the safeguards afforded by having such controls in place I am satisfied that the proposed works would preserve both the appearance and character of this listed building while not offending against saved Policies HE1 and HE4 of the adopted Brighton and Hove Local Plan 2005. Respectively, these policies provide for the protection of listed buildings and for the reinstatement of original features on listed buildings.

Consideration of the second main issue

13. The bulk of the proposed works are internal. Suitable replacement of the modern sash window on the rear elevation and reinstatement of glazing bars to the basement windows in the building's façade at ground floor level would constitute enhancements, as would removal of the spiral metal fire escape stair from the rear of the building. Consideration of these matters leads me to the opinion that the appeal proposal would preserve the character of the Valley Gardens Conservation Area.

Appeal B

Main issues

14. Having regard to the connection between Appeals A and B, and in the light of my conclusions on Appeal A, I am satisfied that the proposal, the subject of Appeal B, would preserve both the listed building and the character of the Valley Gardens Conservation Area. Accordingly, I do not intend to consider these matters in the context of Appeal B.
15. In the case of this appeal I have identified the main issues as whether or not the proposed development would: firstly, result in the unacceptable loss of office premises to an alternative use; secondly, erode the amenities of the occupiers of the residential property that gives onto the rear garden of the appeal property; and thirdly, provide new residential accommodation that fails to comply with the Council's Lifetime Homes criteria.

Reasons for the decision

Consideration of the main first issue

16. On the matter of this issue, the Council's refusal of planning permission cites saved local plan Policy EM5. This policy militates against the loss of office premises to other uses unless it is proven that they are genuinely redundant for office use because the site is not suited to redevelopment or the premises are unsuitable and cannot readily be converted to provide different types of office accommodation, or where a change of use would provide the only practical means of preserving a building of architectural or historic interest.
17. Notwithstanding the Appellant's fruitless marketing campaign, the Council rejects his claim that the appeal property is genuinely redundant for office use. I do not accept the Council's stance. A local estate agent of repute has marketed the appeal building in part or in whole since September 2008 for what appears to initially have been a realistic figure, which was reduced over time. This action had no effect. The Council suggests that this reflects the

poor condition of the building, but the terms of disposal of the premises are not revealed, and the Council's decision to vacate the building in 2006, ostensibly owing to its unsuitability for office use falls to be a material consideration. It seems to me that the appeal premises accord with many of the Policy EM5 factors on which redundancy is judged. In particular I consider that factors a, b, d, and f are illustrative of the genuine redundancy of the appeal property for office use.

18. Policy EM5 further provides that if there is proof that a building is genuinely redundant for office use preference will sequentially be given to an alternative employment generating use or affordable housing. The Appellant has explored these alternatives without success. An application for planning permission was refused by the Council to use the appeal property for Use Class D1 "*Non-residential Institutions*". That refusal is now the subject of Appeal C. The appeal premises have been offered to a number of organisations engaged in the provision of affordable housing but has been rejected by all of them. From consideration of these matters I am of the opinion that the appeal property is genuinely redundant for use as offices with my opinion reinforced by the view of the Council's Economic Development Officer who raised no objection to the proposal, the subject of Appeal C, further stating that: "*It is considered that the property has been actively marketed at competitive rates*".
19. Insofar as the alternative uses promoted by Policy EM5 have been positively explored without success I consider that release of the appeal premises from office use to the alternative use now proposed is acceptable in that it would not run counter to the provisions of that policy. These considerations run parallel to that plank of Policy EM5 relating to the preservation of a building of architectural or historic interest. The appeal premises are vacant and in need of permanent occupation in the interest of their preservation. Implementation of the appeal proposal would achieve this desirable objective, particularly as the premises have a higher status than a building of architectural or historic interest, with its inclusion in the Statutory List denoting that it possesses "special" architectural or historic interest. This further supports my decision to allow this appeal

Consideration of the second main issue

20. The Council's second reason for refusal is predicated on the basis of the effect of the appeal proposal on the residential amenities of the occupiers of 9 St George's Mews, one of the terraced dwellings which immediately backs onto the appeal site. A window in the rear wall of this neighbouring dwelling is positioned coincident with the west site boundary. The existing situation is such that no valid objection could be raised to the continued use of the appeal premises as offices, but the owner of 9 St George's Mews objects to the appeal proposal alleging that the undoubted increase in use of the garden at the appeal site, and residential occupation of the appeal building throughout the whole day, would eliminate any privacy currently enjoyed in this adjoining dwelling.
21. I understand the cause of the objection and I am sympathetic to the Objector. However, the Appellant alludes to the Council having granted planning permission for the use of 9 St George's Mews as a dwelling in the knowledge that the current situation would arise. As the matter stands, if this objection is

accepted for reasons relating to the erosion of residential amenity, thereby leading to dismissal of the appeal, this action would be tantamount to declaring the appeal premises unsuited to any alternative use. In the light of my findings on the existing office use, this would blight the appeal property and most likely render it incapable of accommodating any use whatsoever. That is an unacceptable situation.

22. However, the potential for overlooking appears to have been ameliorated to an extent by the erection of a high fence, apparently without the grant of planning permission, across the appeal site some 2.0 m from 9 St George's Mews. Moreover, at my site inspection information was volunteered regarding negotiations concerning the sale of the enclosed land adjacent to the mews dwelling to the owner of that property. The situation has not been formally resolved, but while I acknowledge that at the present time the appeal proposal conflicts with saved local plan Policy QD27, which is specific to the protection of residential amenity, for the foregoing reasons I find justification for making an exception to that policy.

Consideration of the third main issue

23. The third reason for refusal asserts that the appeal proposal runs contrary to the aims and objectives of saved local plan Policy HO13 which promotes provision of lifetime homes standards in all new dwellings. For reasons that follow, the third part of the policy relating to conversions and changes of use is particularly relevant to the appeal proposal.
24. The building, the subject of the appeal is a 5-storey terraced town house of early 19th century origin. As illustrated by the plethora of internal partitions erected by the Council when the authority used the building as offices, the constraints imposed by the original planform present difficulty in conversion from its original use as a single dwelling. In addition there are the constraints that stem from the need to keep intervention into the original structure and fabric of this listed building to a minimum. In my opinion the building is not well suited to provide lifetime homes standards.
25. Nevertheless, the Appellant claims that a number of the Council's lifetime homes standards have been incorporated in the proposed conversion scheme. Of the 16 standards included in the Council's Planning Advice Note 03 "*Accessible Housing and Lifetime Homes*" a schedule forming part of the grounds of appeal indicates that 3 standards are not applicable while 7 standards are fully met and 5 others are partially met. On the basis of this schedule and having regard to the third part of Policy HO13 which states "*Proposals for conversions and changes of use to provide residential accommodation will be expected to demonstrate that wherever it is practicable, Lifetime Homed criteria have been incorporated into the design*", I consider that the appeal proposal is acceptable as it accords with this element of Policy HO13.

Conclusions

26. Having found the appeal proposal acceptable in relation to all 3 main issues I conclude that there is no reason to withhold the grant of planning permission. I have therefore examined the conditions suggested by the Council. I find the 2 conditions relating to the achievement of a certain Ecohomes standard

unduly convoluted. Accordingly, I intend to replace them with a single condition requiring the development to meet the standard set out in the Council's Supplementary Planning Document 08 "*Sustainable Building Design*".

27. I also criticise the suggested condition concerning arrangements to be made for car free dwellings. I find it unacceptable as I consider that it is noncompliant with the content of paragraph B51 of Annex B to Circular 05/2005 "*Planning Obligations*". This is because the informative linked to the condition requires the developer to provide a planning obligation in the form of a unilateral undertaking or agreement under Section 106 of the Act in order to discharge the condition. This is tantamount to the condition unacceptably necessitating the submission of the planning obligation. In any case it is not incumbent on me to attach such an informative to the grant of planning permission. This would render the condition of no effect. Moreover, a planning obligation should be in place at the time planning permission is granted, and I consider the Council's implied request for a planning obligation at this late stage wholly unreasonable.

Appeal C

Main issue

28. Taking into account the provisions of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I consider that this proposed change of use, without physical alterations to the appeal property, would preserve the listed building affected by the proposed development, therefore this is not a main issue I intend to investigate. However, I am charged to consider the impact of the proposed development on the conservation area. This is a matter to which I turn when dealing with the second main issue identified below.
29. The main issues to be decided are whether or not the proposed development would: firstly, result in the unacceptable loss of office premises to an alternative use; and secondly give rise to a use inappropriate to the area in which the appeal site is located.

Reasons for the decision

Consideration of the first issue

30. The Council's first reason for refusal rests on saved local plan Policy EM5. I have examined this matter in depth in my consideration of Appeal B. For the reasons already given in relation to that appeal I find no impediment to allowing the appeal on the basis of the provisions of Policy EM5 as I consider that in the circumstances of this case the proposal, the subject of appeal C, complies with this policy. In view of this I find that conversion of the appeal premises to accommodate the proposed use acceptable in principle.

Consideration of the second issue

31. The Council's second reason for refusal alleges that insufficient information has been submitted with the application to demonstrate that the proposed development would not cause significant harm to amenity. As with appeal A I point out that the Council had the ability to request any additional information it required. In addition, this reason for refusal refers to potential alterations to

the listed building required to accommodate the proposed use. That is not a relevant matter as the application is only for a change of use with no alterations to the building specified.

32. I appreciate that the application was made to address that element of Policy EM5 which promotes use for employment generating development should it be proven that premises are genuinely redundant for office use. The Council accepts that certain uses within Use Class D1 "*Non-residential Institutions*" would be suitably operated at the appeal premises, but in the absence of reference to a specific use, it rightly mentions that if the appeal proposal were approved and implemented, change to an alternative use within that Use Class could not be prevented by means of a condition.
33. As clarified in its appeal statement, the Council's general concern is that Use Class D1 is wide ranging. They cite the worst case scenario as use of the appeal premises as a doctor's surgery and point to the traffic movements that this potential use would generate, mentioning that the appeal property is devoid of on-site parking provision. I accept this is a justifiable concern, but suggest the worst case scenario might be use of the appeal property as a place of public worship or religious instruction with the potential to attract large numbers of worshippers and people for instruction on many occasions throughout the day from early morning until late hours. In the light of the potential to generate substantial traffic movements in the vicinity of the appeal site, where there is widespread parking control and heavy parking demand, I consider this use unacceptable. Nevertheless it could arise if planning permission were granted for an unrestricted D1 use
34. I also find the possible use of the appeal premises as a surgery and perhaps other uses in Use Class D1 unacceptable as they would be likely to exacerbate the current demand for parking. It is of note that no arrangements have been offered to mitigate the parking demand the appeal proposal would generate. In my opinion the heavy traffic passing along St George's Place significantly detracts from the visual amenity of the area which derives from the buildings in the locality and the open aspect of Valley Gardens. The attraction of additional motor vehicles to this already heavily trafficked area would further impinge on the visual amenity of the area. As such, having regard to the generality of the appeal proposal I conclude that it would not preserve the character of the Valley Gardens Conservation Area. In the light of these matters I find that the appeal proposal fails to accord with saved local plan policies HE6 and TR1 which respectively relate to the protection of conservation areas and to the control of travel demand from development proposals.

Overall conclusions

35. For the reasons given above, and having regard to all the other matters raised, I conclude that Appeals A and B should be allowed while Appeal C should be dismissed.

Formal decision

Appeal A – Ref: APP/Q1445/E/09/2118796

36. I allow the appeal and grant listed building consent for: Internal and external alterations in connection with change of use from offices B1 to 5 self contained

flats at 12 St George's Place, Brighton, East Sussex, in accordance with the terms of application Ref: BH2009/00857, dated 9 April 2009, and the plans submitted therewith, subject to the following conditions:

- 1) The works hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Subject to other conditions imposed on this consent, the works hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans: 892.00; 892.01; 892.03; 892.04; 892.05; 892;06; 892;07.
- 3) Before the works hereby permitted are commenced, details as appropriate of the window to be inserted at third floor level into the rear elevation of the subject building, the glazing bars to the ground floor windows of the façade, and all internal doors, including frames and architraves shall be submitted to and approved in writing by the local planning authority. These details shall include elevations of the window and doors to a scale of not less than 1:20 and cross sections of the head, sill, jambs and glazing bars of the window, the glazing bars to the ground floor windows of the façade, and all members of the doors and frames and architraves to a scale of not less than 1:5. The works shall be carried out in accordance with the approved details.
- 4) No existing door shall be removed without the prior written approval of the local planning authority.
- 5) Before the works hereby permitted are commenced, details of proposed service pipe and ventilation duct runs together with any casings or covers shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 6) With the exception of the basement staircase, all existing architectural features including the main staircase, balustrades, windows, window linings and/or casings, doors, architraves, skirtings, dado rails, picture rails, and cornices shall be retained except where otherwise agreed in writing by the local planning authority.
- 7) Before the works hereby permitted are commenced, details of measure to retain and reveal the original arched openings in partition walls at ground and first floor level shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the details of the approved measures.
- 8) Before the works hereby permitted are commenced, a schedule of all features to be removed, replaced or reinstated shall be submitted to and approved in writing by the local planning authority. All works in the schedule thus approved, be it replacement or reinstatement of features, shall exactly match the originals in detail and materials.
- 9) No cables, wires, aerials, pipework (other than rainwater pipes shown on the approved plans), meter boxes or flues shall be fixed to any part of the subject building without the written approval of the local planning authority.

- 10) No works shall be undertaken until a full photographic survey of the interior and exterior of the subject building has been deposited with the local planning authority.

Appeal B – Ref: APP/Q1445/A/09/2118794

37. I allow the appeal and grant planning permission for: Change of use of redundant former Council office building to provide 5 flats at 12 St George's Place, Brighton, East Sussex, in accordance with the terms of application Ref: BH2009/00856, dated 9 April 2009, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Subject to other conditions imposed on this permission, the development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans: 892.00; 892.01; 892.03; 892.04; 892.05; 892.06.
- 3) Before the development hereby permitted is commenced, details as appropriate of the window to be inserted at third floor level into the rear elevation of the subject building, and the glazing bars to the ground floor windows of the façade, shall be submitted to and approved in writing by the local planning authority. These details shall include elevations of the window to a scale of not less than 1:20 and cross sections of the head, sill, jambs and glazing bars and the glazing bars of the ground floor façade windows to a scale of not less than 1:5. The development shall be carried out in accordance with the approved details.
- 4) No cables, wires, aerials, pipework (other than rainwater pipes shown on the approved plans), meter boxes or flues shall be fixed to any part of the subject building without the written approval of the local planning authority.
- 5) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Appeal C – Ref: APP/Q1445/A/09/2118798

38. I dismiss the appeal.

A J Bingham

Inspector