The Planning Inspectorate

Appeal Decision

Site visit made on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 8 December 2010

Appeal reference: APP/Q1445/C/10/2129041
Land at 8 Pavilion Parade, Brighton BN2 1RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Brighton and Hove City Council.
- The appeal was made by "Mr Michael Blencowe (The Baron Homes Corporation Ltd)" (but see paragraph 1 below).
- The Council's reference is 2006/0541.
- The notice was issued on 14 May 2010.
- The breach of planning control as alleged in the notice is: "Without planning permission the conversion of B1(a) office floorspace on the basement, ground, first and second floors to residential use."
- The requirements of the notice are:
    1. Cease the use of the basement, ground, first and second floors as residential units.
    2. Restore use of the basement, ground, first and second floors to B1(a) office floorspace.
- The period for compliance is four months.
- The appeal is proceeding on ground (a) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Ground (d) was also originally pleaded but was later withdrawn.

Summary of decision: The enforcement notice is varied. The appeal is dismissed and the notice as varied is upheld.

Identity of Appellant

1. The name of the appellant is quoted above from the appeal form. Until now, the Planning Inspectorate has taken it – quite understandably and, on the face of it, correctly - that the appellant is Mr Michael Blencowe. However, from all the available evidence I suspect that the appeal details were incorrectly specified. Indeed, it seems unlikely that Mr Blencowe had a right of appeal against the enforcement notice - although in lodging the appeal Mr Blencowe declared himself to be the owner of the appeal property other evidence

indicates that this was untrue.[1] I have therefore considered whether there is a valid appeal before me. However, in the interests of fairness and giving the appellant the benefit of the doubt, I have decided to assume that Mr Blencowe was acting as an agent for The Baron Homes Corporation Ltd. I shall therefore treat the appeal as if it had been made by The Baron Homes Corporation Ltd.

Costs

2. Two applications for awards of costs have been made, one by the appellant company against the City Council, and one by the City Council against the appellant company. These applications are the subject of a separate decision notice.

Ground (a)

3. Under this ground of appeal, planning permission is sought for the development enforced against. Although the allegation in the enforcement notice refers to "conversion", it is apparent from the stated reasons for issue and the requirements (neither of which refer to any physical works of conversion) that the notice was really directed at the change of use of the basement, ground, first and second floors of the premises from use as offices to residential use. The main issue is whether the change of use is acceptable in the light of relevant planning policies relating to office floorspace in this area.

4. Policy EM5 of the Brighton and Hove Local Plan provides that planning permission will not be granted for the change of use of offices to other purposes unless the offices are "genuinely redundant" in certain specified circumstances. There are three such circumstances: where the site is unsuitable for redevelopment; where the premises are unsuitable and cannot be readily converted to provide different types of office accommodation; or where a change of use is the only practicable way of preserving a building of architectural or historic interest. Under this policy, "redundancy" will also be determined by considering various factors. These include (in summary): the length of the vacancy period; the marketing strategy employed; the prevailing vacancy rate for similar offices in the city; various layout criteria; links to public transport; and the building's quality.

5. Policy EM6 has been mentioned by both sides, who appear to have agreed that this policy is not relevant because it refers to small business units of up to 235 square metres. Taking together all the four floors of the appeal property subject to this enforcement action, the floorspace would exceed 235 square metres, but individual floors could be occupied separately, and the property has apparently been marketed on that basis[2]. Each floor evidently has a floorspace between about 35 and 53 square metres. Therefore policy EM6 does have some relevance. It provides that (among other things) small business

[1] Mr Blencowe's name appears in the "signature" box in the appeal form. The following box labelled "On behalf of (if applicable)" was left blank. In Section D of the form, Mr Blencowe ticked the box indicating that the appellant owns the property; taken together with other information naming him as the appellant, this appeared to indicate that Mr Blencowe owned the property. However, in later correspondence, Mr Blencowe's signature is followed by the words "For and on behalf of The Baron Homes Corporation Ltd" and this, plus statements referring to the company as the owner of the property, is the evidence on which I have based my assumption that the company is the real appellant.

[2] Correspondence from Stiles Harold Williams, for example, refers to "suites".

premises will be retained for employment purposes unless various criteria are met.

6. Policy EM6 is poorly framed as there are five criteria (labelled (a) to (e)), but the word "or" appears after criterion (c) and there is a full stop after criterion (d). It seems that this policy should be read as if there was a semi-colon after criterion (d) followed by the word "or" – that is to say, as if the criteria were alternatives, as opposed to the situation relating to policy EM5 which has the word "and" after factor (e), showing that the factors are not alternatives.

7. The general aim of these policies is evidently to strike a balance between maintaining a reasonable supply of premises for business or office use whilst allowing genuinely redundant premises to be used for other purposes to meet other needs. The essence of the appellant's case is that the premises are redundant as offices, as shown by the efforts made over a considerable period to market the premises for office use, but there has been no interest. The council contend that there has not been any significant change from the situation when a previous appeal seeking permission for change of use was dismissed, and that the appellant has not demonstrated that the premises are redundant office space for the purposes of policy EM5 of the local plan.

8. The dispute in this case has been affected by the refurbishment and conversion work which was carried out after the appellant company bought the building in late 2005. Internal alterations were made which rendered the premises suitable for residential occupation as flats, with a kitchen and bathroom or shower room and toilet for each unit. As the appellant points out, the alterations did not drastically alter the internal layout; but as the council say, it would have been difficult to let the premises as offices while the work was being carried out, particularly at times when details were evidently not finalised because retrospective applications were being made. The use of the premises as flats and bedsit-studios would also not have helped to generate interest from potential office occupiers. Residential occupation evidently stopped in stages after the enforcement notice was issued in March 2010, but continued well into the summer, as two of the units (4 and 5) were still occupied in August 2010.

9. The appellant's argument that the work to the inside of the property was merely to restore a listed building to its former glory and has not affected use as offices is somewhat artificial. The council rightly say that the floor layout now provided is more suited to living accommodation than to office floorspace. It is unusual for offices to have kitchen and shower facilities provided in the way they now are. But the layout does not prevent office use.

10. There is evidence that the premises have been marketed for office use by established, well-known local agents. Initially, it appears that one agent was used. After the enforcement notice was issued, three local agents were evidently engaged to market the property by various means to attempt to achieve a letting. The appellant has supplied copies of correspondence from the agents confirming that there has been no interest in the office space.

11. The appellant's case is unconvincing, for five main reasons. First, there is no evidence to show how the rents sought (as shown in agent's particulars) compare with average or typical office rents for this part of Brighton. Second, it is not possible to detect from the available evidence how the disadvantages of the premises (such as lack of parking space, apparent lack of modern telecommunications access, inflexible room layouts, lack of a lift and air-conditioning, non-compliance with disability legislation, and rather basic heating with storage heaters) have been reflected in the way the premises were marketed and priced. Third, no evidence has been supplied about the prevailing vacancy rate for similar offices in Brighton and Hove (one of the factors mentioned in policy EM5)[3]. Fourth, there is no evidence to show that any attempt has been made to let the premises on terms other than the licences described by the agents.

12. Fifth, there are other office premises in the same terrace (including a solicitor's office and a building apparently occupied by staff of a university department), and this suggests that the building is not as unsatisfactory for office purposes as the appellant claims. Indeed, the property is described by a local chartered surveyor as being in a prime location.

13. In a letter written in August 2010, the same surveyor added that "there is simply no demand for office space at present". It is not clear whether this assessment related to the city centre, to Brighton as a whole, or perhaps to an even wider region; be that as it may, if such a complete lack of demand in August 2010 were to be accepted as justifying a finding that the premises were redundant, the same argument could logically be applied to vacant offices elsewhere in the area, which must have been affected by the same absence of any demand. Indeed, one of the appellant's arguments is that the recent recession has caused problems with office lettings as the number of empty offices in the city has increased. But it would not be right to accept the loss of office space, with its potential for employment-generating use, just because of the effects of the recession on the commercial property market.

14. For planning purposes, demand and need are not the same thing. The basic aim of development plan policy, which has been adopted by the City Council on behalf of the local community, is to balance the long-term need to retain premises for uses which can cater for employment-generating activity against shorter term fluctuations in demand; and demand can be influenced by price. Despite the appellant's claim that "there is no demand for this type of building due to the layout", I suspect that if the price were low enough, demand would arise. This is really another way of putting the point made by the inspector who decided the previous appeal in March 2010, who did not find evidence of an intention to achieve a sale or letting "at a realistic market value".

15. Part of the appellant's case is that the three agents engaged to market the property after the enforcement notice was issued were contracted to do so at what the agents believed was a realistic market price. It seems that the

[3] Among the documents submitted for the appellant at various times during the appeal process there is a letter from Stiles Harold Williams which refers to an attached schedule "setting out all the available space currently in the city", but no schedule was attached, and in any case a schedule without information on similarity with the appeal premises would not have much helped.

agents' belief may not have been sufficiently realistic. In making this assessment, I have noted the written advice by Stiles Harold Williams to the appellant in April 2010 which refers to possible rents of £14-£15 per square foot, depending on assumptions about market trends and other matters, and I have compared that advice with the rents which have evidently been sought, although of course allowance has to be made for lease terms, incentives and other factors. The possibility that the appellant company might not be able to make a profit on their investment does not mean that the premises are redundant as offices; it would merely reflect the operation of the property market. Although agents have advised that the property is difficult to let as offices, this does not mean that it is impossible to let.

16. I return briefly to my earlier comments about the relevance of policy EM6. If I am wrong in interpreting the available evidence as showing that the appeal premises have been marketed for possible occupation as separate units (of less than 235 square metres), there is even more reason to believe that the work carried out before the residential occupation has hindered use as offices. If the premises have been marketed for occupation as a single unit, their attractiveness would be reduced as it seems unlikely that potential takers would be interested in having numerous kitchens. The decision to install kitchens to facilitate residential occupation rather than, for example, telecommunications ducting for potential office occupiers, seems to have been a commercial risk taken by the appellant company.

17. A point claimed by the appellant to be relevant is that "the application proposes an element of employment generating floor space in the ground floor unit….this will maintain at least some element of employment floor space at ground level that would be suitable for a small business such as a small office, studio or consulting room." On this matter, the appellant appears to be misguided. The application (that is to say, the application deemed to have been made under Section 177(5) of the 1990 Act) takes its wording from the allegation, and seeks permission for residential use on basement, ground, first and second floors. The application does not mention any office use of the ground floor. But the suggestion that at least part of the building could be used for offices undermines the appellant's own argument that the property is unsuitable and redundant as offices.

18. I have had regard to the comments about the premises at 12 St George's Place, where planning permission was granted on appeal for change of use to residential use. The recent history of that site, described by a local agent as being in a location having "a somewhat down trodden feel which is not helped by some of the neighbouring uses" does not set a precedent for deciding the present appeal. According to the decision, a material consideration in that case was the fact that the City Council had occupied the building as offices but had vacated it, ostensibly owing to its unsuitability for office use. As noted above, the presence of other office occupiers in nearby parts of the Pavilion Parade terrace weakens the application of the same argument in the appeal before me. Moreover, the potential for office occupiers to show interest in the premises in St George's Place does not appear to have been complicated by the carrying out of internal works or by residential occupation.

19. I conclude that the City Council's case is stronger than the appellant's case. There is a public interest in maintaining a supply of office space in the centre of Brighton; the appeal property is part of that supply and could still be used as offices. Allowing the change to residential use would conflict with development plan policies. Therefore planning permission should not be granted and the appeal on ground (a) does not succeed.

Step 2 of Requirements

20. Although the appellant has not objected to the second step of the requirements as drafted by the council, this step is clearly excessive – a property owner cannot reasonably be required to use a property for a specified purpose within a specified period (as opposed to leaving the property unused). The first step, ceasing the unauthorised residential use (which from my inspection appears to have happened already) is all that is required to remedy the breach of planning control. I shall therefore delete the second part of the requirements.

Request for Guidance

21. The appellant has asked for "guidance as to how the bar is set when it comes to considering extremely similar planning applications". (This request is in comments on the costs application.) Leaving aside the claim about "extremely similar" on which I have commented above, I can understand why this request is made but I regret that it would not be appropriate for me to provide specific advice which could be regarded as influencing a future application or appeal.

Formal Decision

22. I direct that the enforcement notice be varied by deleting Step 2 from the requirements. Subject to that variation I dismiss the appeal, uphold the notice as varied and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector