



Appeal Decision

Site visit made on 28 February 2012

by L Rodgers BEng (Hons) CEng MICE MBA

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

Decision date: 20 March 2012

Appeal Ref: APP/Q1445/A/11/2165991

Cavendish House, 1 Dorset Place, Brighton, BN2 1ST

- 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 Messrs Haines, Skinner & Stokely joint LPA Receivers of Cavendish House against the decision of Brighton & Hove City Council.
 - The application Ref BH2011/01852, dated 16 June 2011, was refused by notice dated 5 October 2011.
 - The development proposed is a change of use from offices (Class B1) to education/training (Class D1).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from offices (Class B1) to education/training (Class D1) at Cavendish House, 1 Dorset Place, Brighton, BN2 1ST in accordance with the terms of the application, Ref BH2011/01852, dated 16 June 2011, subject to the conditions in Annex A.

Reasons

2. Cavendish House is a six storey office block situated behind the American Express offices at the end of Dorset Place, a short cul-de-sac. The ground, first and second floors are currently occupied on what I understand to be a short term basis by Sir Robert McAlpine Construction (SRM) which is using the building as a site office during its work on the new American Express development taking place close by. This short term lease was due to expire in January 2012 – coincident with the planned completion of the American Express premises. However, I saw on my visit that the offices were still in use.
3. Other than the short term let referred to above the building has been empty since being vacated by American Express in June 2009. SRM moved into the ground floor in August 2010 before later occupying the first and second floors. The short term let provides SRM with 3 of the 12 basement parking spaces although the remaining spaces are being used by SRM under licence. According to the Appellant this licence can be revoked with immediate effect in the event that tenants are found for the remaining floors.
4. Since January 2010, the property has been marketed by Flude Commercial offering the building as a whole or on a floor by floor basis. The marketing has included boards, brochures, a direct mail campaign and advertisements in the local press as well as internet marketing on numerous websites - including the Council's own commercial database. The property was initially marketed at £15/sq ft, a rent that the Council accepted was appropriate for the building's

condition and location. However, Flude Commercial confirmed in its letter of November 2011 that the quoting terms had been reduced and that the property was then being marketed at £13.75/sq ft – a figure said to be at the bottom end of the range for office space in Brighton.

5. Policy EM5 of the Brighton and Hove Local Plan 2005 (LP) states that planning permission will not be granted for the change of use of office premises or office sites to other purposes unless they are genuinely redundant. Redundancy will be determined by consideration of a range of factors including the length of time that the premises have been marketed and the marketing strategy adopted. The policy goes on to note that if sites are genuinely redundant then preference will be given to alternative employment generating uses followed by affordable housing. The supporting text to the policy explains that the limited amount of land available for new development means that it is important that the best use is made of all sites and premises.
6. The appeal property has now been on the market for over two years. For the first 7 months the building was offered to the market in its entirety – either in whole or in part – and according to Flude Commercial, the only seriously interested party during that period was SRM. Flude Commercial describes SRM as a 'special purchaser' in that Cavendish House is very close to where SRM are working. I have no reason to doubt that assessment.
7. The Council believes that SRM's lease shows that the building is attractive to a B1 occupier. However, given the particular circumstances surrounding SRM's use of the premises I consider that to be a somewhat tenuous conclusion. I note that, other than SRM, only three other prospective tenants have shown any interest. Two found the premises unsuitable with respect to matters such as location, layout and condition and although the third was interested in the property (subject to disposal of its existing premises) it was not a B1 occupier. I saw on my visit that the floor space per storey was quite modest and whilst this may suit some occupiers, the somewhat unusual layout may also limit the property's appeal.
8. Although the Council also believes that SRM's tenancy may have acted to put off other prospective tenants, Flude Commercial state that the presence of SRM has had no negative effect and I understand that neither Flude Commercial nor the Council's Economic Development Department received any inquiries from parties who were subsequently 'put off' by SRM's presence. Given that the building is arranged in a manner that would facilitate floor by floor lettings, that car parking spaces could be made available to other tenants and that Flude Commercial regards SRM as a good professional tenant there is little evidence to show that SRM's presence has put off prospective tenants.
9. Having considered the factors laid out in LP Policy EM5 against the background above it is my conclusion that the offices may be regarded as genuinely redundant. Given that the proposed D1 use would be employment generating I see no conflict with Policy EM5.

Other matters

10. The Council considers that, if permission was to be granted then contributions towards the Local Employment Scheme and Sustainable Transport would need to be secured through a s106 obligation. No such obligation has been submitted. However, the Council did not include this as a reason for refusal

and, notwithstanding the comments of the Council's Senior Economic Development Officer the Council has provided little substantive information supporting the contributions it seeks. Consequently it is not possible to assess the proposed contributions against the Community Infrastructure Levy Regulations and Circular 05/2005: *Planning Obligations*.

11. In these circumstances, given that the proposal would retain the building in an employment generating use and the Council itself accepts that the site has good links to public transport, I do not see the absence of an obligation as a reason to dismiss the appeal.
12. The Council has also raised concerns over the provision of cycle parking spaces and the lack of explicit measures to secure the efficient use of resources. In the interests of sustainability and to comply with LP Policies SU2 and TR14 I accept that these matters should be secured. However, even taking account of the Council's concerns in respect of vertical cycle racks, I see no reason to believe that appropriate provisions could not be secured through the imposition of conditions.

Conditions

13. In addition to conditions securing the provision of cycle spaces and other sustainability measures the Council has suggested a number of others which it considers would be appropriate were the appeal to be allowed. I have considered these in the light of Circular 11/95.
14. In the interests of the amenities of the area and those of neighbouring residents conditions controlling the hours of use and the provision of refuse and recycling facilities would be required. The Council's Supplementary Planning Guidance on Parking Standards (subject to consultation and approved by the Council and therefore deserving of significant weight) seeks the provision of disabled spaces for both B1 and D1 development and a condition securing such provision would be both reasonable and necessary.
15. In the interests of proper planning the standard timeliness condition would be required as would one ensuring implementation in accordance with the submitted drawings. However, given the limited number of parking spaces on site, its good public transport links and the provision of cycle parking spaces, I, like the Appellant, see no need for a condition securing a Travel Plan.
16. No other conditions are required. However, to ensure clarity and compliance with Circular 11/95 I shall, where necessary, amend the wording of the Council's suggested conditions.

Conclusion

17. Against this background, and having considered all other matters before me, I conclude that subject to the conditions noted above the appeal should succeed.

Lloyd Rodgers

Inspector

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until a scheme for the storage and recycling of refuse has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and shall thereafter be retained.
- 3) No development shall take place until a scheme detailing the sustainability measures to be incorporated into the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details demonstrating how the development would achieve the efficient use of energy, water and materials. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the development.
- 4) Notwithstanding the details shown on drawing 823 06 submitted with the appeal, no development shall take place until a scheme detailing the provision of secure cycle parking facilities for the users of, and visitors to the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the development and shall thereafter be retained.
- 5) The use hereby permitted shall not take place other than between the hours of 07.00 – 21.00 on Mondays - Fridays, 08.00 – 20.00 on Saturdays and 08.30 – 20.00 on Sundays and Bank or Public Holidays.
- 6) The first occupation of the development hereby approved shall not take place until disabled parking facilities have been provided in accordance with details which have first been approved in writing by the Local Planning Authority. The approved facilities shall thereafter be retained.
- 7) The development hereby permitted shall be carried out in accordance with the following approved plans: 'Location Plans' and Drg. Nos. 823 01, 823 02, 823 03, 823 04 and 823 05.