



Appeal Decision

Site visit made on 10 June 2013

by Simon Miles BA(Hons) MSc MRTPI

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

Decision date: 27 June 2013

Appeal Ref: APP/Q1445/A/13/2190720

Unit 2, Freshfield Industrial Estate, Stevenson Road, Brighton BN2 0DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Hargreaves Management Ltd against the decision of Brighton & Hove City Council.
- The application Ref BH2012/02614, dated 23 August 2012, was approved on 27 December 2012 and planning permission was granted subject to conditions.
- The development permitted is demolition of two storey wing to front of unit; renewal of external cladding; provision of new entrances, loading doors and glazing to front elevation.
- The conditions in dispute are Nos 3, 4, 5, 6 and 8, which state as follows:
 - 3. The external finishes of the development hereby permitted shall match in material, colour, style, bonding and texture those of the existing building.
Reason: To ensure a satisfactory appearance to the development in the interests of the visual amenities of the area and to comply with Policies QD1 and QD14 of the Brighton & Hove Local Plan.*
 - 4. The planning units hereby approved shall be used for B2 uses except ancillary facilities.
Reason: For the avoidance of doubt, in the interests of protecting the identified employment sites and to safeguard the amenities of the area and to comply with Policies EM1 and QD27 of the Brighton & Hove Local Plan.*
 - 5. The premises shall not be open or in use except between the hours of 7.00am to 10.00pm on Monday to Saturday, and between the hours of 8.00am to 8.00pm on Sundays and Bank Holidays.
Reason: To safeguard the amenities of the locality, in accordance with Policy QD27 of the Brighton & Hove Local Plan.*
 - 6. No commercial vehicular movements nor any loading or unloading of vehicles shall take place other than between the hours of 8.00am to 8.00pm on Monday to Saturday, and not at any time on Sundays and Bank Holidays.
Reason: To safeguard the amenities of the occupiers of adjoining properties.*
 - 8. There shall be no use of any of the units, either partially or wholly, as a trade counter.
Reason: To ensure any Class B2 units remain for genuine small starter business occupiers only and to comply with Policy EM1 of the Brighton & Hove Local Plan.*

Procedural Matter

1. The description of the development given on the Council's decision notice is different to that given on the application form. However, as there is nothing to indicate that the description was formally amended, I have taken it from the application form.
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Decision

2. The appeal is allowed and planning permission Ref BH2012/02614 for demolition of two storey wing to front of unit; renewal of external cladding; provision of new entrances, loading doors and glazing to front elevation at Unit 2, Freshfield Industrial Estate, Stevenson Road, Brighton BN2 0DF, granted on 27 December 2012 by Brighton & Hove City Council, is varied by deleting condition Nos 3, 4, 5, 6 and 8.

Main Issue

3. The main issue is whether condition Nos 3, 4, 5, 6 and 8 are necessary to ensure that the development does not cause significant harm to the character, appearance and amenities of the area and having regard to the tests for conditions set out in paragraph 206 of the National Planning Policy Framework.

Reasons

4. The appeal relates to an existing Class B2 industrial unit on the Freshfield Industrial Estate. The National Planning Policy Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. However, planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Condition No 3

5. The development includes the refurbishment of the exterior of the building. Whilst certain elements, such as the facing brickwork, are shown to match existing, much of the exterior is to be re-clad in new materials. It follows that condition No 3, which requires the external finishes to match those of the existing building, is in large part irrelevant to the development permitted.
6. Had the Council intended to retain detailed control over the external finishes, a condition requiring the submission and prior approval of further details and/or samples would have been more appropriate. However, the approved plans already include detailed annotations specifying the external finishes and colours. In view of this and the general character of the estate, whereby the exterior finishes are not of critical importance, I see no reason why these matters need be the subject of a condition.

Condition No 4

7. The meaning of this condition is not clear from the wording. The application did not propose 'planning units' and in the context of the development applied for this term lacks clarity and precision. The further reference to 'ancillary facilities' only adds to the potential confusion, particularly as neither 'planning units' nor 'ancillary facilities' are identified in the application or on any of the accompanying plans. The Council has clarified its position by stating that its intention was not to remove permitted development rights that apply to certain changes of use. However, if that is the case, condition No 4 serves no useful purpose, since any future change of use requiring planning permission would have to be the subject of a separate planning application. Whilst an informative would not have been inappropriate, condition No 4 is unnecessary.

Condition Nos 5 and 6

8. Saved LP Policy QD27 ensures that regard must be had to any material nuisance or loss of amenity in respect of any proposed development or change of use. However, it is not reasonable to seek to impose new restrictions retrospectively on an existing use unless this is justified by the circumstances of the development. In this case, even if the existing main space were subdivided into two smaller units, the overall floorspace would remain the same (and a small attached office area would actually be removed).
9. I therefore see no compelling reason why the development should lead to any significant intensification of use or other material change that would justify the imposition of significant new restrictions on opening hours and deliveries. I am mindful that this is not an isolated unit in the midst of a residential area, but a unit on an established industrial estate. As above, it is not clear whether similar restrictions apply to other units on the estate. In short, these conditions are not supported by an appropriate and precise justification but would needlessly restrict the flexibility of potential occupiers.

Condition No 8

10. LP Policy EM1 states that trade counters will not be acceptable in Class B8 units. However, no such prohibition applies to Class B2 units, as here. Moreover, I see no reason why the provision of a trade counter, presumably in an ancillary capacity, should prejudice the suitability of the unit for small starter business occupiers. It follows that such a condition would needlessly restrict the flexibility of the unit for potential occupiers.

Conclusions

11. For the reasons given I find that condition Nos 3, 4, 5, 6 and 8 are not necessary to ensure that the development does not cause significant harm to the character, appearance and amenities of the area. The tests for conditions set out in paragraph 206 of the National Planning Policy Framework are not met, as the conditions are not necessary to make the development acceptable. Furthermore, condition Nos 5, 6 and 8 unreasonably restrict the flexibility of the unit for potential occupiers. Accordingly, the appeal succeeds and condition Nos 3, 4, 5, 6 and 8 are deleted.

Simon Miles

INSPECTOR

