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# Appeal Decision

Site visit made on 16 July 2013

**by Sheila Holden** BSc MSc CEng TPP MICE MRTPI FCIHT

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

**Decision date: 25 July 2013**

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**Appeal Ref: APP/Q1445/A/13/2193328**

**130 Cowper Street, Hove, East Sussex BN3 5BL**

- 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 Raggio of R & R Developments against the decision of Brighton & Hove City Council.
  - The application Ref BH2012/03174, dated 1 October 2012, was refused by notice dated 29 November 2012.
  - The development proposed is a change of use from B1 to B2.
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. In its decision notice the Council described the proposal as a change of use from car valeting (B1) to car repair garage (B2). This is also the description used on the appeal form. I have therefore determined the appeal on the basis of this more detailed description of the proposal.
3. The appeal premises have a long planning history and the building appears to have had a variety of commercial uses over the years, including for storage and as a car valeting business. There have also been proposals to replace the building with a dwelling but these were rejected in part because of the site's established commercial use and the Council's policy objective of resisting the loss of employment land.
4. There has been a dispute between the parties as to the lawful commercial uses of the premises, namely whether it was B1 or B2. This matter was determined through an appeal on an enforcement notice, Ref: APP/Q1445/C/12/2169597 following the use of the site for car repairs and maintenance. In upholding the enforcement notice the Inspector concluded that the lawful use of the site was B1. However, in arriving at his conclusion he did not make a site visit as this would have had no bearing on his decision, which purely interpreted the relevant planning law and was therefore not a site-specific matter. He was in no doubt that vehicle repairs and maintenance are Use Class B2 activities and that these would be detrimental to residential amenity if undertaken in a residential area. However, he did not assess the effects of the operation of the specific repair business that was being undertaken at the premises at the time of that appeal. I have approached this appeal with these factors in mind.

## **Main issue**

5. The main issue is the effect of the proposed change of use on the living conditions of the occupants of neighbouring residential dwellings, particularly in relation to noise, disturbance, dust and fumes.

## **Reasons**

6. Cowper Street is a residential street characterised by two-storey terraced houses with small front gardens, typical of the Victorian period. No 130 is a single storey building attached to No 128, at the end of the terrace. It occupies the full depth of the site and has a pitched roof over its front part and a flat roof towards the rear. From the evidence presented it would appear that the Council could have served the enforcement notice as a result of complaints from nearby residents about noise, disturbance and increased parking problems arising from the use of the premises for car repairs. At the time of my site visit the building was unoccupied and in a poor state of repair.
7. The appellant has suggested that the garage could only service two vehicles at any one time and that all the mechanical operations would be sound suppressed. In addition, the equipment that would be in use would be limited by the size of the building. He also suggested that nuisance from dust and fumes could be reduced through the use of filters. I note that the Council's environmental health did not raise any objection to the proposal, subject to a restriction on the hours of operation. However, the Council has suggested a condition to ensure that equipment would be adequately sound proofed, in the event that the appeal was allowed.
8. Nevertheless, the adjoining occupiers have raised significant concerns about the likely level of noise and disturbance that would be created by a permanent change of use of the building. They described in some detail the problems they experienced as a consequence of the previous unlawful use of the site for car repairs, which neither of the main parties has challenged. The previous Inspector set out the range of activities that could be associated with a car repair and maintenance business and would create noise, fumes and smells. He concluded that these could be detrimental to residential amenity, even without specifically taking into account the proximity of such activities to any individual dwelling.
9. It seems to me that restricting the noise from equipment would not necessarily be enough to ensure that the occupants of No 128 did not suffer from noise that could penetrate through the party wall. The proposal does not suggest that there would be any physical alterations to the building that could reduce the level of noise emanating from the operation within it. Although the appellant suggested that fumes and smells could be dealt with through the use of filters, no details were provided to enable me to assess whether or not this would be an effective method of mitigation.
10. In these circumstances I consider that a precautionary approach is necessary, particularly as there is no substantiated technical evidence to address my concerns. If the appeal was to be allowed and it was subsequently found that the operation gave rise to unacceptable levels of noise, disturbance, dust or fumes, the occupiers of No 128 would be likely to suffer on-going harm to their living conditions. In the absence of more precise details as to how the risk of such harm could be reduced and secured by appropriate conditions I am not

persuaded that a permanent change of use to the building would be acceptable.

11. The appellant provided examples of sites where garages are in close proximity to other residential areas. However, I do not know if these pre-date planning controls. Although no evidence was provided to suggest that these operations attract complaints, neither were there details of the relationship between those activities and the adjoining properties. It is therefore not possible to make direct comparisons with the appeal proposal, which I have determined on its individual planning merits.
12. In this case the eastern wall of the appeal property is shared with No 128 and forms the boundary of its small rear garden. This would bring the activities within the garage very close to this adjoining residential dwelling and with it the risk of unacceptable harm. Noise and disturbance to other nearby neighbours is unlikely to be as acute. Nevertheless, the rear elevations of Nos 1-7 Rutland Road are also in close proximity to the site due to the small size of their rear gardens. This adds weight to my concerns about the effects of the proposed change of use.
13. I therefore conclude that the proposed change of use would be harmful to the living conditions of the occupants of No 128 and other nearby residential properties as a result of increased noise, disturbance, dust and fumes. The proposal would therefore be contrary to saved Policy QD27 of the Brighton and Hove Local Plan, which seeks to protect the amenity of the City's residents.
14. The National Planning Policy Framework (The Framework) seeks to support economic growth in order to create jobs and prosperity. There is therefore no objection in principle to a commercial use within the appeal property. However, the Framework also seeks to secure a good standard of amenity for all existing occupants of land and buildings. In my view in this case the benefits of the proposed commercial activity would be outweighed by the harm to the living conditions of adjoining residents.
15. For this reason, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

*Sheila Holden*

INSPECTOR

