

## Appeal Decision

Site visit made on 28 June 2016

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 11 July 2016**

---

**Appeal Ref: APP/Q1445/W/16/3144593**  
**5 Westbourne Grove, Hove, Sussex BN3 5PJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class P of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Mr S Hardwick (Brighton and Hove Properties Limited) against the decision of Brighton & Hove City Council.
  - The application Ref BH2015/03480, dated 28 September 2015, was refused by notice dated 25 November 2015.
  - The development proposed is prior approval for change of use from storage (Class B8) to residential (Class C3) to form 1 no. studio flat at ground floor level.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council's sole reason for refusal is that insufficient evidence has been submitted to demonstrate that the appeal property has been in storage (class B8 use) on 19 March 2014 or for a four year period prior to the application submission.
3. In addition, in order for the conditions in Class P.2 to be met, consideration of the impacts of the development on the matters set out in Class P.2(b) (i) to (vi) is necessary.

### Main Issues

4. The main issues are:
  - Whether the proposal is permitted development having regard to Class P of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015); and
  - If the proposal is permitted development under the provisions of GPDO 2015, whether the proposal is acceptable with regard to its impacts on air quality, transport and highways, contamination, flooding, noise, and provision for storage and distribution services in the area.

### Reasons

5. The appeal property comprises the ground floor of a two storey terrace block located to the rear of a shopping parade on Portland Road. Vehicular access to Westbourne Grove is provided via Westbourne Gardens.
-

6. Class P states that development is not permitted by Class P if the building was not used solely for a storage or distribution centre use on 19 March 2014 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use, as set out in Class P.1(a). Development is not permitted under Class P.1(b) if the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.
7. P.2(a) requires a developer to submit a statement with the application setting out the evidence relied upon to demonstrate that the development is permitted by Class P as set out in P.1(a) and P.1(b).
8. The Council has confirmed that no formal planning permission or Lawful Development Certificate (LDC) exists for any of the units for Class B use. The appellant has submitted extracts from planning officer reports from 2002 and 2014, and a planning application in 2014 in support of the application and appeal. The premises are described in an officer report from 2002<sup>1</sup> as a garage/store.
9. The planning application form for the 2014<sup>2</sup> application states that the existing use for all of the units (Nos 5, 5a, 6, and 6a) was within Use Class B8. The Council's report repeats the applicant's own description of the premises subject of that application as "storage and craft in one unit and builders store in another". However, the Council did not corroborate this description and from the information supplied it is unclear which property is being referred to.
10. I acknowledge that the Council officer's report from 2014 describes the terrace as a whole as being in commercial use, and that plans from the 2014 application have been provided and are annotated with what is described on the application as the existing use as a store. However, this is not sufficiently precise to establish whether No 5 was in use solely for storage or distribution on 19 March 2014 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use, as required by Class P.
11. I therefore conclude that the proposal does not meet the requirements for being permitted development under the GPDO 2015. As such it is not necessary for me to consider the impact of the proposals with regard to the conditions set out in Class P.2. My conclusion on this matter would not preclude any application that the appellant may wish to make under s191 and s192 of the 1990 Act (as amended).
12. For the reasons set out above, the appeal should be dismissed.

*Claire Victory*

INSPECTOR

---

<sup>1</sup> Ref BH2002/00726/FP

<sup>2</sup> Ref BH2014/02925