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# 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**

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**Appeal Ref: APP/Q1445/W/16/3144594**

**5a 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 BH2015/03481, 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 first floor level.
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## 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. Notwithstanding this, in order to establish if the conditions in Class P.2 are met, consideration of the impacts of the development on the matters set out in Class P.2(b) (i) to (vi) is also necessary.

## Main Issues

3. The main issues are therefore:
  - 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

4. The appeal property comprises the first 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. No 5a is accessed by a separate access at ground floor level leading to the first floor.
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5. 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).
6. The Council has confirmed that no formal planning permission or Lawful Development Certificate (LDC) exists for the unit for Class B use. An officer report from 2002<sup>1</sup> for a planning application for Nos 5 and 6 Westbourne Grove states "At No 5 is a garage/store at ground floor with a separate street entrance leading to a studio at first floor."
7. In 2014 a subsequent application was submitted for Nos 5 and 6 Westbourne Grove.<sup>2</sup> The form indicates that the existing floor space for Nos 5 and 6 was in use as B8 storage and distribution. Whilst an incomplete copy of this application form has been submitted, the extract from the planning officer's report on the application states: "the applicant has described on the application form submitted that the current uses as including storage and craft use in one unit, and a builder's store in the other. Both are described as being in current use." However the plan for the application<sup>3</sup> shows No 5a (first floor) as a workshop. This is repeated in the appeal statement. I note that the Council officer's report from 2014 describes the terrace as a whole (Westbourne Grove) as being in commercial use. Nevertheless, the information provided in these planning applications in respect of the use of No 5a specifically is inconclusive.
8. The appellant has also supplied a summary of the business rates valuation for the property from 2010 to 25 September 2015, which describes it as a store. The appeal statement also notes that the last use of the site was as a document store for Sparks and Sons estate agents, but no independent evidence has been provided to support this assertion.
9. Taking all of the above into account, there is conflicting evidence on whether No 5a was in use 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 required by Class P. As there is insufficient information to enable the decision maker to determine whether the works fall within the permitted development rights, the appeal fails.
10. I therefore conclude that the proposal does not meet the requirements for being permitted development under P.1(a) and P.1(b) of the GPDO 2015. It follows that it is unnecessary 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).
11. For the reasons set out above, the appeal should be dismissed.

*Claire Victory*

INSPECTOR

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

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

<sup>3</sup> Plan dated 26.8.2014 and date stamped by the Council 19 September 2014