
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/16/3144595
6 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 BH2015/03482, 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.
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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. However, consideration of the impacts of the development on the matters set out in Class P.2(b) (i) to (vi) is also necessary in order to determine if the proposal constitutes permitted development.

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 it 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 lies within a two storey terrace block at the rear of a shopping parade on Portland Road. Access is provided via Westbourne Gardens. No 6 is at ground floor level, with No 6a at first floor level above, and is accessed by a separate entrance.
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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 stated that no formal planning permission or Lawful Development certificate exists for No 6 for Class B use. The appellant has provided extracts from the Council's planning officer reports on applications in 2002 and 2014 to support the proposal. The address for the 2014 application is given as Nos 5 and 6 Westbourne Grove (two ground floor units), but it is clear from the report and the application drawings that the application also relates to Nos 5a and 6a, the two units at first floor level.
7. A report from 2002¹ states that No 6 was in use as a store, and drawings supporting the 2014 planning application², also identify No 6 as a store. A further undated plan³ has been provided showing No 6 as a store. The planning officer's report from 2014 repeats the applicant's own description that "the current uses include storage and craft use in one unit and a builders store in the other." However, this is not confirmed by the Council, and the description relates to Nos 5, 5a, 6 and 6a. It is unclear to which property this description refers. The appellant contends that the last use of the appeal property was as furniture storage by a local restaurant owner', but no evidence has been submitted to support this assertion.
8. However, a Valuation Office Agency (VOA) summary of business rates from 1 April 2010, and dated 25 September 2015 gives the description of No 6 as "workshop and premises" and a special category code of "096 - Factories, Workshops and Warehouses (including Bakeries and Dairies)". These descriptions are both broader than solely Class B8 storage and distribution, and neither would rule out activities outside a Class B8 use, such as manufacturing or food production. As such I cannot be certain that the premises was in sole use for storage or distribution on the relevant date or for at least four years before the date development under Class P is said to have begun.
9. Taking all of the above into account, I conclude that the proposal does not meet the requirements for being permitted development under the GPDO 2015. It is therefore unnecessary for me to consider the impact of the proposals in relation 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).
10. For the reasons set out above, the appeal is dismissed.

Claire Victory

INSPECTOR

¹ Ref. BH2002/00726/FP

² Ref. BH2014/02925

³ Drawing no. 457/04